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United States Supreme Court

OCTOBER TERM, 1983

NAARTEX CONSULTING CORPORATION,

Petitioner,

v.

JAMES G. WATT, SECRETARY OF THE INTERIOR, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

I. Whether an implied private right of action exists under the Mineral Leasing Act of 1920.

II. If there is no private right of action under the Mineral Leasing Act of 1920, whether violation of the regulations thereunder may give rise to a common law cause of action for fraud.

III. Whether the federal anti-assignment laws prevent the assertion of another persons rights against the federal government under the Mineral Leasing Act of 1920.

PARTIES TO THE PRECEEDING IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

1. Naartex Consulting Corporation - Appellant.
2. Russell Huff - Intervenor.
3. James G. Watt, Secretary of the Interior - Appellee.
4. Michigan Wisconsin Pipeline Company - Appellee.
5. American Natural Resources Company - Appellee.
6. General American Oil Company of Texas - Appellee.
7. Raymond G. Albrecht - Appellee.
8. Fred L. Engle d/b/a Resource Services Company - Appellee.
9. Davis Oil Company - Appellee.
10. Southland Royalty Company - Appellee.
11. J.S. Harrell - Appellee.
12. Reading & Bates Petroleum Company - Appellee.
13. Panhandle Western Gas Company - Appellee.

14. Paul Messenger & Company - Appellee.

15. Marlis E. Smith, Trustee/Marlis E. Smith Trust - Appellee.

16. Gordon L. Heele - Appellee.

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Petitioner Naartex Consulting Corporation (hereinafter "Naartex") respectfully requests that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit entered on November 29, 1983.

OPINIONS BELOW

Naartex Consulting Corporation's initial protest was denied by the United States Department of the Interior Bureau of Land Management by letter dated September 28, 1979. (A-166).

The Bureau of Land Management's decision was appealed to the United States Department of the Interior Board of Land Appeals. That decision is reported as Naartex Consulting Corp.,

IBLA 80-65, 48 IBLA 166 (June 9, 1980), petition for rehearing denied (September 16, 1980). (A-133)

Naartex Consulting Corp. brought suit in the United States District Court for the District of Columbia. The decision of the District Court is reported as Naartex Consulting Corp. v. Watt, 542 F. Supp. 1196 (D.D.C. 1982). (A-77).

The United States Court of Appeals decision from which review is sought is Naartex Consulting Corp. v. James G. Watt, Secretary of the Interior, et al., No. 82-1979 (D.C. Cir. November 29, 1983). (A-1).

JURISDICTION

The judgment from which review is sought was entered by the United States Court of Appeals for the District of

Columbia Circuit on November 29, 1983. The Memorandum Opinion is set forth at A-1.

The jurisdiction of this Court is proper under 28 U.S.C. §1254(1), and Supreme Court Rule 17.1(c) (1980) on the basis that a federal court of appeals has decided important questions of federal law which have not been, but should be, settled by this court.

STATUTES AND RULES INVOLVED

This suit involves application of the following statutes and rules:

28 U.S.C. §1254(1) (1976)

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. §1331 (Supp. IV 1980)

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. §1361 (1976)

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

30 U.S.C. §226(a) (1976)

All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.

30 U.S.C. §226-2 (1976)

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matter. No such action contesting such a decision of the Secretary rendered prior to September 2, 1960 shall be maintained unless the same be commenced or taken within ninety days after September 2, 1960.

31 U.S.C. §203 (1976)

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefore, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part of share thereof, except as hereinafter provided, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

Such transfers, assignments, and powers of attorney, must recite the warranty for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

41 U.S.C. §15 (1976)

No contract or order or any interest therein shall be transferred by the party to whom such contract or order is given to any other party and any such

transfer shall cause the annulment of the contract or order transferred so far as the United States are concerned.

43 C.F.R. §3100.0-5(b) (1981)

"Sole party in interest" means a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to an application, offer or lease in which any other party has any of the interests described in this section. The requirements of disclosure in any application or offer of an applicant's or other parties' interest in a lease, if issued, reflect the policy that all applicants and other parties having an interest in simultaneously filed lease applications or offers to lease shall have an equal opportunity for success in the drawings to determine priorities [sic]. Additionally, such disclosures provide the means of maintaining adequate records of acreage holding. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options of any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived from or which may accrue in any manner from the

lease based upon or pursuant to any agreement or understanding existing at the time when the application or offer is filed, is deemed to constitute an "interest" in such lease.

43 C.F.R. §3102.2-7 (1981)

(a) The applicant shall set forth on the lease offer, or lease application if leasing is in accordance with Subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer or lease, if issued.

(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office no later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§3101.1-5 and 3101.2-4 of this title.

43 C.F.R. §3112.2-1(f) (1981)

No person or entity shall hold own or control any interest in more than one application for a particular parcel.

43 C.F.R. §3112.6-1(b) (1981)

Unqualified applicants. The application of any applicant who is unqualified or has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected.

Fed. R. Civ. P. 17(a)

Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Supreme Court Rule 17.1(c)

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

* * *

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

STATEMENT OF THE CASE

I. The Proceedings Below.

In March 1975, a lease of oil and gas development rights was awarded to one Norbert F. Albrecht pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §181, et seq. (1976). The lease was designated Lease W50394. Subsequently, Norbert F. Albrecht passed away, leaving

his interest in Lease W-50394 to his brother, Raymond Albrecht.

Naartex Consulting Corporation filed a protest with the United States Department of the Interior, Bureau of Land Management (hereinafter "BLM") on September 14, 1979 protesting the issuance of federal oil and gas Lease W-50394. On September 28, 1979, the BLM issued its decision denying the protest of Naartex on the basis that: (1) none of the unsuccessful applicants had appealed the award of the lease to Albrecht; (2) the assignees were protected by their bona fide purchaser status; (3) the producing oil and gas lease could only be cancelled in suits brought by the United States Attorney General in the appropriate United States

District Court; and (4) the interests in this lease could only be set for sale by competitive bid under the Mineral Lands Leasing Act of 1920. (A-166).

Naartex appealed the decision of the BLM to the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (hereinafter "IBLA"). The IBLA issued its decision on June 9, 1980 dismissing the appeal on the basis that: (1) cancellation of the lease required a proceeding in Federal District Court instituted by the United States Attorney General; (2) the Department was prevented from cancelling a lease held by a qualified bona fide purchaser; and (3) Naartex had no standing to maintain the protest. Naartex's request for a fact-finding hearing was denied by the IBLA. (A-133).

On July 6, 1981, Naartex instituted an action in the United States District Court for the District of Columbia seeking monetary damages and injunctive relief for fraud and misappropriation committed by the private defendants with regard to the issuance and transfer of Lease W-50394. In addition, Naartex sought to overturn the decisions of the BLM and IBLA. On September 30, 1981, Naartex sought leave to amend its Complaint. Naartex's uncontested motion was granted by the District Court on October 22, 1981.

The federal court had jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1361 because plaintiff's cause of action arises under the Constitution and laws of the United States. In addition, plaintiff brought

this action against an officer of the United States in his official capacity, and plaintiff sought to compel an officer of the United States to perform a duty owed to plaintiff.

The District Court dismissed plaintiff's action on the basis that: (1) there was no in personam jurisdiction over the private defendants; (2) venue was not proper; (3) there is no implied private right of action under the Mineral Leasing Act of 1920; and (4) Naartex's suit violated the federal anti-assignment laws under 31 U.S.C. §203 and 41 U.S.C. §15. The District Court also denied Naartex's motion to amend its complaint to include Russell Huff, an unsuccessful applicant for Lease W-50394, as a party plaintiff. Naartex Consulting Corp. v.

Watt, 542 F. Supp. 1196 (D.D.C. 1982). (A-77). In Naartex Consulting Corporation v. James G. Watt, et al., No. 82-1979 (D.C. Cir. November 29, 1983) the Court of Appeals affirmed the District Court's dismissal of Naartex's action. The Court of Appeals held that: (1) the District Court lacked personal jurisdiction over the private defendants; (2) venue does not lie in the District of Columbia; (3) the District Court did not err in declining to transfer Naartex's claims to another district where personal jurisdiction and venue could be had because Naartex failed to show that its claims could properly be heard in any federal court; (4) Naartex's claim violated the federal anti-assignment statutes; and (5) the Mineral Leasing

Act and regulations thereunder preclude cancellation of a producing lease except by judicial proceedings instituted by the United States Attorney General. (A-1).

II. The Federal Oil and Gas Leasing Program.

The United States Department of Interior from time to time offers parcels of federally-owned lands for leasing by United States citizens pursuant to the Mineral Leasing Act of 1920. 30 U.S.C. §181, et seq. (1976). The period during which offers to lease may be filed by qualified citizens is known as a "simultaneous filing period"; the method by which a particular offer is selected is by lottery. The lease is awarded to the first qualified offeror selected in the lottery. The issuance of the lease confers upon the lessee the

right to exploit the oil and gas deposits, if any, contained in the particular parcel of land.

The Secretary may decline to lease a parcel of land after a drawing is held and a qualified applicant is accepted. McTierman v. Franklin, 508 F.2d 885, 887 (10th Cir. 1975). However, if the Secretary decides to award a lease, he must award it to the first drawee, provided that the first drawee is qualified under the regulations, and provided that such drawee pays the first year's rent under the lease within 15 days of notification of the lease award. 43 C.F.R. §§3112.2-1, 3103.3-2 (1977).

In the event the first drawee selected is determined to have been not qualified, the lease is awarded to the second drawee. If the second drawee is

determined to have been not qualified, the lease is awarded to the third drawee. 43 C.F.R. §§3112.2-1, 3112.4-1 (1977). Only three drawing entry cards are drawn. If none of the first three drawees selected is qualified a new lottery is held for that parcel of land. 43 C.F.R. §3112.5-1 (1977).

Among the regulations issued by the Department of Interior, to ensure that each lottery is conducted fairly, is the sole party in interest regulation formerly set forth at 43 C.F.R. §3102.7 (1977) (now set forth at 43 C.F.R. §§3102.2-7 (1981) and 3100.0-5(b) (1981)). The sole party in interest regulation requires that the identities of all parties holding an interest in an offer to lease be disclosed at the time of filing.

Another regulation is the multiple filing regulation formerly set forth at 13 C.F.R. §3112.5-2 (1975) (now set forth at 43 C.F.R. §3112.2-1(f) (1981)). The multiple filing regulation limits offerors to one offer per drawing for a particular parcel.

III. The Award of Lease W-50394.

In March 1975, a simultaneous filing was held for a parcel of land situated in the State of Wyoming, known as Parcel W-484. Russell Huff participated in the simultaneous filing by submitting an offer. The filing made by Norbert F. Albrecht was selected first in the lottery. A lease of oil and gas development rights appurtenant to the land was issued to Norbert F. Albrecht following a determination by the Department of the Interior that he

was the first qualified offeror for Parcel W-484. The lease was designated Lease W-50394. Norbert F. Albrecht later passed away leaving his interest in Lease W-50394 to his brother Raymond Albrecht, who was joined as a defendant at plaintiff's request in the District Court.

Resource Services Company (hereinafter "RSC"), during the 1975 Simultaneous Filing Period, filed multiple offers to lease mineral rights on behalf of various clients. Apparently RSC had filed approximately 200 offers out of approximately 2,000 such offers filed for Parcel W-484. Each offer to lease was made pursuant to an identical agreement between RSC and each of its clients including Norbert Albrecht. The agreements guaranteed RSC a variable percentage

interest of 12 or 16 percent in all profits realized upon a subsequent transfer by such successful lottery client to another holder. The agreement further provided that RSC was to act as its client's sole and exclusive agent in all negotiations of sales and transfers of the lease away from the client. RSC's percentage interest was undisclosed to the Department of Interior at the time RSC filed offers for Parcel W-484, in violation of the sole party in interest and multiple filings regulations of the Department of the Interior.

Subsequent to the award of Lease W-50394, Naartex entered into an agreement with Russell Huff, whereby Huff assigned all record title in Lease W-50394 to Naartex retaining only a percentage interest in any future proceeds of the offer.

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals Has Decided Important Questions of Federal Law Which Have Not Been and Should Be Settled By This Court.

The private respondents have committed clear violations of the Mineral Leasing Act of 1920. However, the Secretary of the Interior has failed to reject the unlawful filings of respondent RSC; and the Court of Appeals has decided that the Mineral Leasing Act of 1920 does not create an implied right of action against the private defendants, there is no common law cause of action for fraud or unjust enrichment for violations of the act, federal anti-assignment laws prohibit Naartex from seeking relief against the Secretary of the Interior on behalf of applicant Russell Huff, and denial of Naartex's

motion to join Russell Huff as a party plaintiff need not have been granted because such action would have been futile. The decision of the Court of Appeals from which review is sought, thus, effectively forecloses the availability of a meaningful remedy to applicants for federal oil and gas leases, and denies those applicants their rights to equal and fair opportunity to attain those leases.

II. The Ability of the Government to Conduct a Fair Process for Issuing Federal Oil and Gas Leases Has Been Severely Impaired By the Decision of the Court of Appeals.

The operation and administration of the federal oil and gas leasing program is charged by statute to the Department of the Interior. 30 U.S.C. §226(a) (1976). The Department has an explicit

"... policy that all applicants and other parties having an interest in simultaneously filed lease applications or offers to lease shall have an equal opportunity for success in drawings to determine priorities." 43 C.F.R. §3100.0-5(b) (1981). Pursuant to this policy the Department has enacted regulations which set forth specific procedures for determining to whom leases will be awarded. 43 C.F.R. §3100, et seq.

The regulations set forth that only qualified persons may hold an interest in a lease. 43 C.F.R. §3112.6-1(b) (1981). Among the requirements that must be complied with by an applicant for a lease are the sole party in interest requirement and the multiple filing requirement. 43 C.F.R. §3102.2-7 and §3112.2-1(f) (1981).

The private respondents knowingly violated the clear and unambiguous regulations. The decision of the Court of Appeals denying the petitioner a remedy sanctions the award of leases to unqualified parties who knowingly violate regulations in order to increase their chances of acquiring awards of leases. Although the Court of Appeals for the District of Columbia has recognized that "an overarching policy of fairness is intrinsic in the program," Lowey v. Watt, 684 F.2d 957, 967 (D.C. Cir. 1982), qualified and innocent participants in the program are denied a fair opportunity to lease awards.

The Department of the Interior has the responsibility to conduct its oil and gas lottery programs so as to give each applicant an equal opportunity to win the lottery held for each lease.

It is a "departmental policy that all ... parties ... have an equal opportunity for success in the drawings." 43 C.F.R. §3100.0-5(b) (1981).

Under the Mineral Leasing Act leases were originally awarded to the first applicant, so theoretically each applicant had an equal chance to submit its application first. However, because this race-to-the-land-office system became unwieldy, the lottery system was instituted, under which each applicant has, ideally, an equal chance of winning.

Consistent with the departmental policy that all applicants have an equal opportunity for success in the drawing the regulations prohibit any party from having an interest in more than one lease offer on any one parcel. 43 C.F.R. §3100.0-5 (1981).

Furthermore, there are limitations on how much public land one party can lease at any one time. This is to ensure that as many parties as possible have an opportunity to obtain a lease without making the leased areas too small to be worth exploiting.

To facilitate the enforcement of these regulations, it is required that each applicant for a lease disclose all parties who have, at the time the drawing entry card (DEC) is filed, a legally enforceable right to participate in the proceeds of a lease. 43 C.F.R. §3102.2-7 (1981). Otherwise, the offer to lease is void.

This disclosure requirement is not just so much red tape that lease applicants must contend with. Rather, the government is entitled to know the identities of

parties who have acquired or seek to acquire interests in federally owned lands so that it can administer the program fairly, keep accurate records, and prevent multiple filings that create unfair advantages. With thousands of entry cards filed for each drawing, the Secretary of the Interior should insist on strict compliance with the regulations, including the disclosure requirement, so as to prevent unqualified parties from obtaining leases through artifice, e.g., by using "straw men" to hide their identities and to avoid detection of their disqualifications.

In this case, respondent RSC devised a scheme to circumvent these safeguards designed to protect the integrity of the system and ensure the availabiliity of lease opportunities to the public on an equitable basis.

It is clear that the service agreements pursuant to which RSC filed entry cards for its clients gave it an "interest" in each lease won by its clients, for the contracts gave RSC a legally enforceable right to share in the proceeds of its clients' leases. Moreover, RSC knew that its service agreement created an interest in each lease because 43 C.F.R. §3100.0-5 clearly says so. Further, RSC was a party to two cases holding that such contractual provisions constituted interests, and RSC appealed neither case. Lola I. Doe, 31 IBLA 394 (1977); Sidney H. Schreter, et al., 32 IBLA 148 (1977).

Since at least 1967, the Interior Department has held that exclusive sales agency agreements entered into prior to the time of a drawing must be disclosed.

John v. Steffans, 77 I.D. 146 (1967). Also, the regulations require the disclosure of interests in leases. 43 C.F.R. §3102.7. Therefore, RSC was required to disclose its interest in every lease offer it filed, but it knowingly failed to do so.

By such failure to disclose, RSC was able to file multiple offers in the names of various clients on the more desirable parcels, thereby enhancing its mathematical odds of acquiring an interest in those parcels. Obviously, if RSC files entry cards for over 200 clients on a single parcel, it has over 200 chances to acquire an interest, while everyone else has one chance, except to the extent that RSC's competitors practice the same scheme.

Indeed, such schemes were not uncommon. Oil companies, precluded by the multiple-filing regulation from using their enormous wealth to obtain any greater chance at a particular parcel to be leased than any average citizen would have, could arrange with a leasing service, such as RSC, to file a large number of entry cards on a desirable parcel, with the understanding that if a client of the leasing service was awarded the lease, the leasing service, as exlusive agent, would sell the lease to the oil company. Although the leasing service and the oil company can profit handsomely from such a scheme, the public policy of equal opportunity of success for all is severely compromised thereby.

Abuses of the system became so widespread that on February 29, 1980, the Secretary of the Interior issued an order, No. 3049, suspending the issuance of oil and gas leases under the lottery program. A news release from the Office of the Secretary, dated the same day, quoted the Director of the Bureau of Land Management to the effect that the leasing system "has been subjected to such thorough manipulation that the possibility of lawful, bona fide participants successfully obtaining a lease in many cases been reduced to a very low level."

Applicants for federal leases who complied with the regulations have thus been denied equal opportunity to obtain awards of federal oil and gas leases. Despite this denial, applicants for

federal oil and gas leases have no meaningful remedy available to them.

III. A Private Right of Action Should Be Implied Under the Mineral Leasing Act of 1920.

The traditional factors which this Court uses to determine whether a private right of action exists under a particular statutory or regulatory scheme indicate that a private right of action should be implied under the Mineral Leasing Act of 1920. Those factors are: (1) whether the plaintiff is one of the class for whose special benefit the statute was enacted; (2) whether there is any explicit or implicit indication of legislative intent either to create such a remedy or to deny one; (3) whether it is consistent with the underlying purpose of the legislative scheme to imply such a remedy for the plaintiff; and (4) whether

the cause of action is one traditionally relegated to state law. Cort v. Ash, 422 U.S. 66, 78 (1975).

A. Naartex and Huff are Members of the Class For Whose Special Benefit the Statute Was Enacted.

The Mineral Leasing Act of 1920 was enacted to benefit the federal government, by requiring the payment of rentals and royalties to it for the production of gas and oil on federal land and by preventing the complete alienation of oil and gas resources which had occurred under the previous patent system, under which the federal government was compelled to convey a fee interest. However, the Act was also designed to benefit all oil and gas developers by providing a fair, orderly system for allocating federal lands for oil and gas development. For example, on March 21,

1960, when certain amendments to Sections 17 and 27 of the Mineral Leasing Act of 1920 were debated on the floor of the House of Representatives, Mr. Thomson of Wyoming cited "the promotion of an equitable distribution of benefits from nationally owned resources" as one of the objectives of the legislation. Representative Thomson then went on to say:

> The Mineral Leasing Act of 1920 itself very adequately expresses its purpose as "An act to promote the development of coal, phosphate, oil, oil shale, gas, and sodium on the public domain." Under the act, this has been accomplished to a remarkable degree, to the benefit of the Nation's economy and security.
>
> Hundreds of millions of dollars of rentals and royalties have accrued to the U.S. Government from oil and gas leasing. Mineral leasing revenues in fiscal year 1959 amounted to almost $92.5 million.

> Even more important than this, the development has produced an industry which has been in a major way responsible for our higher standard of living, has furnished Federal and State revenues through taxation, and has provided jobs to a large amount of our population.

86 Cong. Rec. 6143 (1960) (remarks of Rep. Thomson).

Russell Huff, and all participants in federal oil and gas lease lotteries, are the key to the smooth functioning of the industry of which Mr. Thomson spoke. If they are not protected under the terms of the Mineral Leasing Act the explicit purposes of promoting "an equitable distribution of benefits from nationally owned resources" and promoting the development of mineral resources in public land will be frustrated.

This purpose of benefiting participants in federal oil and gas lotteries

is also set forth in the regulations promulgated pursuant to the Act:

* * *

> The requirements of disclosure in any application or offer of an applicant's or other parties' interest in a lease, if issued, reflect the policy that all applicants and other parties having an interest in simultaneously filed lease applications or offers to lease shall have an equal opportunity for success in the drawings to determine priorities [sic]. Additionally, such disclosures provide the means of maintaining adequate records of acreage holding. (emphasis added).

* * *

43 C.F.R. §3100.0-5(b) (1981).1/

Naartex and Huff, as prospective, eligible holders of an interest in Lease W-50394, should be allowed to seek relief

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1/ It was, of course, the violation of this disclosure requirement, as well as other violations, that led the Department to cancel the lease interests of defendant RSC and its successful clients in numerous other lease protests.

from the private defendants for their violations of federal regulations under the Mineral Leasing Act.

B. The Legislative History of the Mineral Leasing Act Indicates an Intent to Create a Private Remedy.

General silence by Congress may be construed to allow an implied right of action.

This Court has stated:

> When Congress intends private litigants to have a cause of action to support their statutory rights, the far better course is for it to specify as much when it creates those rights. But the Court has long recognized that under certain limited circumstances the failure of Congress to do so is not inconsistent with an intent on its part to have such a remedy available to the persons benefited by its legislation.

Cannon v. University of Chicago, 441 U.S. 677, 717 (1979) (under all four factors of the Cort v. Ash test, Congress intended

to create a private right of action under Title IX of the Education Amendments Act of 1972 to sue for exclusion from a federally-financed education program on the basis of sex).

As discussed above, the regulations promulgated under the Mineral Leasing Act have articulated a policy that is implicit throughout the Act, namely that all offerors for federal leases "shall have an equal opportunity for success in the drawings to determine priorities." Congress necessarily intended that this policy be enforced through the efforts of private parties when it provided the right to seek judicial review of all decisions of the Secretary affecting mineral leases. See 30 U.S.C. §226-2 (1976). Thus Congress intended that a private right of action serve as an

additional tool, in conjunction with the administrative process, to ensure fair lease drawings.

C. A Private Right of Action Would Be Consistent With the Underlying Purpose of the Act.

One of the underlying purposes of the Mineral Leasing Act is to promote the public interest by developing mineral resources contained in the land belonging to the public and securing in return a flow of royalties for the use of these public lands. It would be entirely consistent with this purpose to recognize a private right of action for Huff, Naartex, and others similarly situated. If organizations and individuals such as the private defendants are allowed to continue their fraudulent activities, the government will continue to lose millions of dollars in uncollected

royalties from undisclosed interests. Moreover, the Act does not provide a method for forcing parties found guilty of mineral lease fraud to yield up the monies which they have received as a result of their fraud. To allow private parties, such as Naartex, to sue for these ill-gotten proceeds would provide an additional safeguard against manipulation of the federal mineral leasing program.

It does not follow that the existence of a federal regulatory enforcement scheme such as that created under the Mineral Leasing Act of 1920 necessarily precludes the additional enforcement tool of an implied private right of action. A significant body of case law decided by this Court exists in which a private right of action has been

implied from a comprehensive federal regulatory scheme. These private rights of action have been implied in recognition of the fact that individuals whose stake in the success or failure of a federal program is particularly urgent will be extremely effective in enforcing fair play and compliance with the rules for such programs.

Federal securities law, in which shareholders are granted a private right of action against corporations as to violations of the applicable statutes and regulations, provides an example of a field where the use of the "private attorney general" concept to combat fraud has been particularly successful. See J.I. Case Company v. Borak, 377 U.S. 426, 430-31 (1964) (shareholder has an implied right of action under §§14(a)

and 27 of the Securities Exchange Act of 1934 to sue for damages caused pursuant to the solicitation of votes by a misleading proxy statement); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 196-201 (1976), reh'g denied, 425 U.S. 986 (1976) (purchaser or seller of a security has the implied right under §10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 to sue for damages caused by intentional deception practiced in connection with such purchase or sale).

More recently, this Court has held that a private right of action implied under the Commodity Exchange Act of 1936 was preserved by the massive federal regulatory scheme instituted by the Commodity Futures Trading Commission Act of 1974. Merrill Lynch, Pierce, Fenner & Smith v. Curran, 456 U.S. 353 (1982).

Justice Stevens, delivering the opinion of this Court, noted that the Commodity Futures Trading Commission Act provided substantial penalties for violations of the statute as well as conferring broad regulatory and enforcement powers upon the newly-formed Commission, including the power to seek injunctive relief for violation of provisions of the Act, the power to alter or supplement the rules of futures contract markets, and the power to direct a contract market to take whatever action was deemed necessary by the Commission in an emergency. This Court was nonetheless persuaded that the additional tool of a private right of action under the Commodity Futures Trading Commission Act would be an invaluable enforcement device, and found nothing in the Act evidencing an intent

to do away with the private right of action which had been construed by the courts pursuant to the Commodity Exchange Act of 1936. Id. at 1841-44.

Similarly, that the Mineral Leasing Act of 1920 and the regulations promulgated thereunder provide certain remedies for violations of the act should not deter this court from finding that the additional tool of a private right of action should also be implied under the Act.

D. Plaintiffs' Cause of Action is Not One Traditionally Relegated to State Law.

Finally, plaintiffs' cause of action is not of the type traditionally relegated to state law. Controversies arising under a federal program such as the mineral leasing program should ideally be

adjudicated by the federal courts under the provisions of the act establishing the program.

It is a paramount principle of equity that a court will go much further to grant relief when the public interest is implicated than when solely private interests are involved. Virginian Railway Company v. System Federation No. 40, 300 U.S. 515, 552 (1937). Naartex seeks to enforce a legislative policy in favor of a fair, candid, and non-fraudulent program of mineral rights leasing. The present litigation involves the public interest, and no other method exists under the Mineral Leasing Act or the Department's regulations of removing the monetary incentive to abuse the oil and gas leasing program.

IV. If There is No Private Right of Action Under the Mineral Leasing Act of 1920, Violation of the Regulations Thereunder Should Give Rise to a Common Law Cause of Action For Fraud, Unjust Enrichment or Conspriacy.

The Mineral Leasing Act of 1920 is silent as to the disposition of the sums accumulated by fraudulent leaseholders during the period before cancellation. Manipulators of the oil and gas leasing system will have scant incentive to reform until a private right of enforcement aimed at forcing the disgorgement of ill-gotten lease royalties is recognized. However, even if this Court finds that no such private right of enforcement exists, Naartex and Huff should be entitled to relief on the ground of common law fraud, misappropriation or conspiracy.

The private respondents took, in effect, 200 chances out of 2,000 to win Lease W-50394, violated Department of the Interior regulations in so doing, and thus achieved collectively $27,000,000 in revenue. Naartex and Huff took only one chance and were defrauded by the private respondents of the benefit of that one chance. Naartex and Huff should be entitled to damages. Whether Naartex and Huff are awarded all the profits or one share of the profits along with others similarly situated, the courts should attempt to render some form of justice in this case.

The courts have a responsibility and an interest in supplying a meaningful remedy for rights it creates or guarantees. Thus, this Court has previously ruled that a private utility company had standing

to sue on both theories of violation of the Tennessee Valley Authority Act and common law conspiracy to enjoin the TVA from selling electricity to customers in a particular area. Kentucky Utilities Company v. Tennessee Valley Authority, 237 F. Supp. 502, 505 (E.D. Tenn. 1964), aff'd sub nom., Hardin v. Kentucky Utilities Company, 390 U.S. 1, 6-7 (1968).

This equitable policy in favor of affording relief wherever possible must come to the forefront where, as here, individuals and organizations have accumulated substantial revenue by means of fraudulently obtained interests in oil and gas resources, and no measure exists in the federal statute or regulations to force the disgorgement of such illegal proceeds.

The Mineral Leasing Act of 1920 and the applicable regulations make no provision for an accounting and disgorgement of the proceeds received pursuant to illegal interests in oil and gas leases. Only cancellation of the interest by the government, to be followed by competitive bidding or a second lottery, are prescribed. Cancellation of only one or two among the numerous lease interests held by large oil companies can offer no real deterrent to the fraudulent, but profitable, behavior alleged by Naartex in its amended complaint because the $27,000,000 in oil revenues extracted from the land will remain in the hands of the private appellees. Only by allowing suits to recover for fraud and misappropriation perpetrated by lease offerors or their

representatives, either as a private remedy under the Mineral Leasing Act or under common law theories, can the policies implicit in the Act by fully realized.

V. Naartex's Suit Against the Federal Government Should Not Be Deemed to Be Barred By the Federal Anti-Assignment Laws, or in the Alternative, Russell Huff Should Be Permitted to Intervene as a Matter of Right in Order to Maintain the Action in His Own Right.

A. Naartex Consulting Corporation Has Standing to Litigate on Behalf of Huff.

The court below held that the agreement between the plaintiff and its assignor, Russell Huff, violated the federal anti-assignment laws, 31 U.S.C. §203 (1976) and 41 U.S.C. §15 (1976). The agreement between Naartex and Huff simply does not fall within the ambit of either of the anti-assignment statutes,

as it does not present any of the three evils which these statutes were designed to prevent. See generally United States v. Sharon, 342 U.S. 288, 291-92 (1952); United States v. Aetna Surety Company, 338 U.S. 366, 373 (1949).

The anti-assignment acts have not been rigorously applied across the board. It has been held that the federal anti-assignment statutes do not apply to ordinary leases of real estate by the United States where, under the facts of the case, the policies of the anti-assignment provisions have not been violated. Freedman's Savings and Trust Company v. Shepherd, 127 U.S. 494, 505-06 (1888); United States v. Jordan, 186 F.2d 803, 808 (6th Cir. 1951), aff'd per curiam, 342 U.S. 911 (1952). Thus the statutes should not be applied to the

lease involved in the present case, where no interest or right of the federal government has been threatened or will be threatened.

First, Naartex is not an organization attempting improperly to influence government officials. Instead, it is a company designed to investigate fraud in the complex, esoteric world of mineral leasing and press claims on behalf of injured persons through the proper administrative channels, which are available on equal terms to all similarly situated persons. Neither does the arrangement between Huff and Naartex present any threat of duplicative claims against the government. In fact, as Huff has assigned all record title to Naartex and now owns only a percentage interest in any future proceeds of the

offer he could not now bring a second claim against the government in regard to his offer; he must sue with Naartex unless or until the company's interest is deemed to fail and revert back to him. Finally, no potentially valid counterclaims or defenses exist against Huff which might be lost through the assignment to Naartex.

B. Even if Naartex Had No Standing, Huff Was Entitled to Maintain the Lawsuit in His Own Right.

In reviewing the District Court's refusal to permit Huff to intervene, the Court of Appeals found based on Fed. R. Civ. P. 17(a):

> No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or

> substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(A-70).

The Court of Appeals, however, found that the District Court correctly found that joinder of Huff would have been futile. (A-73).

To amend the complaint to join Huff would not have constituted a futile act. Even if Naartex's entire interest in all claims could be deemed to fail under the anti-assignment provisions, Huff would still be able to maintain suit in his own right.

Under established law, an attempted assignment that fails to comply with the anti-assignment provisions does not work a forfeiture of the original claim. See, e.g., Segal v. Rochell, 382 U.S.

375, 384 (1966). Failure to comply with the requisite formalities of these statutes merely excuses the federal government from recognizing the assignment. See Segal v. Rochelle, supra. Failure to meet the requirements of the anti-assignment provisions does not render the assignment invalid as between the parties to the assignment. McKenzie v. Irving Trust Company, 323 U.S. 365, 369 (1945).

Thus the original claim is preserved and may still be sued upon by the original claimant.

Conclusion

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Dated: February 27, 1984

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82-1979

NAARTEX CONSULTING CORPORATION, APPELLANT

RUSSELL HUFF

v.

JAMES E. WATT,
SECRETARY OF INTERIOR, ET AL.

Appeal from the United States District
Court for the District of Columbia
(Civil Action No. 81-01540)

Argued October 3, 1983

Decided November 29, 1983

Daniel J. Piliero II, with whom Kathryn L. Mann was on the brief, for appellant.

C. Michael Buxton, with whom Charles D. Tetrault and B. Lee Ware for American Natural Resources Co., et al., Gerry Levenberg and Laura L. Payne for General American Oil Co. of Texas, Thomas P. Humphrey for James S. Harrell, and C. Scott Crabtree, for Gordon L. Heele, et al., were on the joint brief, for appellees.

Jacques B. Gelin, Attorney, Department of Justice, with whom Robert L. Klarquist, Attorney, Department of Justice, was on the brief, for appellee, James G. Watt, Secretary of the Interior.

Thomas W. Ehrmann, Wayne E. Babler, Jr. and Charles A. Grube were on the brief, for appellee, Fred L. Engle d/b/a Resource Service Company.

Jerome C. Muys and John F. Shepherd, for Davis Oil Company, Raymond Shibley, Brian D. O'Neill and Daniel J. Conway for Panhandle Western Gas Co., Raymond G. Larroca, Thomas Carr and William C. Anderson for Reading & Bates Petroleum Co., were on the joint brief, for appellees. Eric B. Carlson also entered an appearance for appellee, Davis Oil Company.

Richard G. Morgan, Martha Priddy Patterson, and Charles W. Garrison were on the brief, for appellee, Raymond G. Albrecht.

Before: WALD and BORK, Circuit Judges, and DAVID W. WILLIAMS*, Senior District Judge for the Central District of California.

Opinion for the Court filed by Circuit Judge WALD.

WALD, Circuit Judge: This action begins with a lottery, held in Wyoming in 1975 by the Department of Interior to select a lessee for a parcel of land in Wyoming that was, at the time, outside any known producing oil or gas field. Two years later, the land began producing oil; and two years later still, Naartex Consulting Corporation (Naartex), acting

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* Sitting by designation pursuant to Title 28 U.S.C. §294(d).

on behalf of an unsuccessful applicant in the lottery, challenged the issuance of the lease. Naartex claimed that Resource Service Company (RSC), the filing service that had entered the winning application on behalf of Norbert Albrecht, had retained an interest in many applications in the lottery, including Albrecht's, in violation of the legal limit of one application per person1/, and that Albrecht and RSC had intentionally concealed this fact. Naartex also alleged that subsequent purchasers of interests in the lease had secretly conspired with Albrecht to pre-arrange their acquisitions before the

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1/ Under 43 C.F.R. §3112.2-1(f) (1982), "[n]o person or entity shall hold, own or control any interest in more than one application for a particular parcel."

lease was issued, also in violation of the regulations.2/ After pursuing administrative remedies, Naartex filed this action in the district court, primarily seeking damages from the private defendants, and mandamus relief against the government to order the cancellation of the lease.

The district court dismissed the complaint on numerous procedural grounds, set forth infra at 7. For the reasons explained below, we affirm.

2/ See 43 C.F.R. §3112.4-3 (1982) ("No application, offer, lease or interest therein may be transferred or assigned prior to the issuance of the least . . .").

I. BACKGROUND

In March 1975, the Wyoming State Office of the Bureau of Land Management (BLM) held a "simultaneous oil and leasing" lottery pursuant to 43 C.F.R. §§3112 et seq. (1982) for the rights to lease a parcel of Wyoming land not "within any known geological structure of a producing oil or gas field." Mineral Leasing of 1920, §17(b), 30 U.S.C. §226(b).3/ Norbert F. Albrecht won the lottery, and on June 1, 1975 the BLM issued to him lease number W-50394. One month later, Albrecht assigned his entire title to the lease to J.S. Harrell, while retaining

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3/ For a detailed description of the simultaneous oil and gas leasing program, see Lowey v. Watt, 684 F.2d 957, 960-61 (D.C. Cir. 1982).

a five percent royalty interest in the lease. Numerous subsequent assignments of drilling rights, reservations and transfers of royalty interests followed. In 1977, a producing well began operations on the leased land.

On January 25, 1979, Alvin Abrams, as president of Geosearch, Inc., filed with the BLM a protest challenging the issuance of the lease to Albrecht. The Geosearch protest - filed in the name of all unsuccessful applicants in the lottery for lease W-50394 - claimed that Albrecht's initial application violated the Department of Interior (DOI) regulations mandating disclosure in all lease applications of "the names of all other parties who own or hold any interest in the application,

offer or lease, if issued." 43 C.F.R. §3102.2-3. Geosearch protested that Albrecht had an undisclosed service agreement with Fred Engle, d/b/a Resource Service Company (RSC) when he filed his lease application, and that his service agreement constituted an "interest in the lease" that must be disclosed.4/ This

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4/ Under Albrecht's service agreement, RSC gained exclusive brokerage rights to sell any lease that Albrecht might win. Whether RSC acted as broker or Albrecht negotiated a sale himself, RSC would receive 16% of the first $100,000 and 12% thereafter of any selling price or royalty payments for five years. See RSC Service Agreement with Norbert Albrecht, reprinted in Statement of Reasons on Behalf of Resource Services Company, Inc. app. C., Matter of Raymond Albrecht, IBLA No. 80-867 (Oct. 6, 1980). The Interior Board of Land Appeals, two years after the lottery for lease W-50394, held that such service agreements create "interests" in lease applications, and that filing (FOOTNOTE CONTINUED ON NEXT PAGE)

BLM dismissed this protest on February 6, 1979 on various grounds, and on May 6 the Interior Board of Land Appeals (IBLA) dismissed Geosearch's appeal because a statement of reasons for the appeal had not been filed.5/

(FOOTNOTE CONTINUED FROM PAGE A-9) services entering multiple applications pursuant to such agreements consequently violate the prohibition against holding interests in more than one application for a given lease. See Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). In these decisions, the Interior Department refused to issue leases to RSC clients. After the Doe and Schreter decision, RSC altered its agreements to conform with BLM policy. See Lowey v. Watt, 684 F.2d at 963.

5/ See Letter from Glenna M. Lane, Chief, Oil and Gas Section of Wyoming BLM to Alvin Abrams, President of Geosearch, Inc. (February 6, 1979), reprinted in Joint Appendix of Appellees (J.A.A.) at 13-14; Order (May 6, 1979), reprinted in J.A.A. at 15.

Four months later, on September 19, 1979, Abrams filed another protest against the issuance of lease W-50394, this time as the president of Naartex.6/ Naartex based its protest upon rights assigned to it by Russell Huff, an unsuccessful applicant in the 1975 lottery. On September 28, 1979, BLM dismissed the protest on the grounds that (1) Huff retained no interest in the lease because he failed to challenge its issuance within 30 days, (2) subsequent title transfers

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6/ Naartex and Geosearch share the same address, and Alvin Abrams is president of both companies. Both Naartex and Geosearch are in the business of protesting the issuance of public land leases on behalf of unsuccessful lease applicants. See Naartex Consulting Corp. v. Watt, 542 F. Supp. 1196, 1198 (D.D.C. 1982); Geosearch, Inc. v. Andrus, 508 F. Supp. 839, 841 (D. Wyo. 1981).

of the lease rendered its new holders "bona fide purchasers" whose interests may not be cancelled even though the initial lease holder may have violated the Mineral Leasing Act7/, and (3) sections 27(h)(1) and 31(a) of the Mineral Leasing Act, 30 U.S.C. §§184(h)(1), 188(a), preclude the cancellation of a "producing lease" such as W-50394.8/ The IBLA dismissed Naartex's subsequent appeal on

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7/ See 43 C.F.R. §3108.3(c) (1982) ("A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation.")

8/ See Letter from Glenna M. Lane, Chief, Oil and Gas Section of Wyoming BLM to Naartex (Sept. 28, 1979), reprinted in Naartex Appendix (N.A.) at 29-30.

June 9, 1980 for the same reasons, noting also that Naartex "ha[d] not shown that the service agreement alleged to exist between [RSC] and Albrecht" constituted an "interest" that should have been disclosed pursuant to the regulations.9/

9/ See 48 IBLA 166 (1980). The IBLA explained that RSC works with at least two different types of service agreements, only one of which constitutes an "interest" in the lease application, compare Sidney H. Schreter, 32 IBLA 148 (1977) (RSC service agreement that constitutes an interest) with Geosearch, Inc., 39 IBLA 49 (1979) (RSC service agreement that does not constitute an interest), and that Naartex had failed to show which type of agreement Albrecht had signed. See 48 IBLA at 173. While Naartex, in administrative proceedings and in this action, submitted an RSC service agreement that it asserted to be Albrecht's, the name of the applicant on these exhibits is unintelligible because the signatures
(FOOTNOTE CONTINUED ON NEXT PAGE)

On September 8, 1980, Naartex petitioned the IBLA for reconsideration of its decision. The IBLA denied the petition on September 18 because the peition was not "filed promptly" in accordance with Department regulations.10/ Next, on December 12, Naartex petitioned the Secretary of Interior to review the

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(FOOTNOTE CONTINUED FROM PAGE A-13) are not reproduced clearly. See, e.g., Complaint ¶24 and Exhibit A, reprinted in N.A. at 5, 25. However, RSC introduced the Albrecht service agreement in another IBLA docket, revealing it to be the type of agreement that, under IBLA precendents, constitutes an interest in Albrecht's lease application. See supra note 4.

10/ 43 C.F.R §4.126 (1982) provides that motions for reconsideration "shall be filed within 30 days from the date of receipt of a copy of the Board's decision."

appeal; on April 6, 1981, Undersecretary Hodel denied the peition, finding the IBLA decision "to be a persuasive" and conclusive disposition of the issues in this case.11/

Naartex filed a complaint in the district court on July 6, 1981, claiming that the administrative failure to cancel lease W-50394 was arbitrary and capricious and a deprivation of property without due process of law. The complaint also sought damages from various private defendants for "intentionally deceiv[ing] the Department and all other offerors for parcel W-484 [i.e., lease W-50394]," and for violating DOI disclosure regulations.12/

11/ See N.A. at 42.

12/ Amended Complaint ¶77, reprinted in N.A. at 15.

The district court summarily dismissed the action on the grounds that: (1) the court lacked personal jurisdiction over the private defendants, (2) venue did not lie in the District of Columbia, (3) the private defendants were indispensable parties to the action, (4) the Mineral Leasing Act creates no private right of action, (5) the Anti-Assignment laws, 31 U.S.C. §203 and 41 U.S.C. §15, bar Naartex from asserting Huff's claims against the government, (6) Huff himself should not be permitted to join or intervene in this action because he failed to challenge the lease issuance in a timely manner, and because intervention should not be employed to cure an otherwise futile action, and (7) Naartex and Huff both lacked standing

to challenge the lease issuance. See Naartex Consulting Corp. v. Watt, 542 F. Supp. 1196 (D.D.C. 1982).

We affirm. The district court lacked personal jurisdiction over the private defendants, who are indispensable parties to this action. Venue also does not lie in this district. In addition, the district court was not obliged to transfer this action to another district where personal jurisdiction and venue could be had, because Naartex's claims suffer from serious substantive defects. Thus the district court properly dismissed the claims against the private defendants. As to the claims against the government, the district court also correctly chose to dismiss. Naartex runs afoul of federal

anti-assignment statutes when it attempts to assert claims against the government on the basis of an assignment by Russell Huff, an unsuccessful lease applicant. Moreover, joinder of Huff to avoid the anti-assignment prohibition would have been futile. The Mineral Leasing Act and regulations thereunder preclude cancellation of a producing lease - such as W-50394 - except by judicial proceedings instituted by the Attorney General in the district where the leased land is located. Finally, because the private defendants are indispensable parties to the action to cancel the lease, the action may not proceed in their absence.

II. THE CLAIMS AGAINST THE PRIVATE DEFENDANTS

Counts IV through VII of Naartex's amended complaint seek declaratory and injunctive relief and money damages from a variety of private defendants. These defendants include Raymond Albrecht, the brother and successor in interest of Norbert Albrecht, the winner of the 1975 lottery; RSC, the filing service that allegedly entered the Albrecht lease application without disclosing its own interest in that application; and numerous companies and individuals that gained interest in lease W-50394 after its issuance.

We believe the district court acted properly when it dismissed these counts. The district court lacked personal

jurisdiction over these defendants. Moreover, proper venue for these claims does not lie in the District of Columbia. Finally, the district court had good reason to dismiss this case, rather than transfer it to another district.

Personal Jurisdiction

The district court correctly held that it lacked personal jurisdiction over the numerous private defendants. None of the defendants resides or is incorporated in the District of Columbia. To establish personal jurisdiction, then, Naartex must show that the defendants had the requisite "contacts" with the District. The District of Columbia "long-arm" statute, D.C. Code Ann. §13-423, enumerates the possible bases for personal jurisdiction over nonresidents. Section 423(a)(1) extends

personal jurisdiction to persons "transacting any business in the District of Columbia"; section 423(a)(4) extends to any person "causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue . . . in the District of Columbia." These provisions are limited by section 423(b), which states that "only a claim for relief arising from the acts enumerated in this section may be asserted against him." Thus "section 423(b) . . . bar[s] . . . claims unrelated to the acts forming the basis for personal jurisdiction." Willis v. Willis, 655 F.2d 1333, 1336 (D.C.Cir. 1981).

While Naartex in its pleadings in the district court contended that the defendants' acts in securing and transferring the lease "were intended to have an impact in this District,13/ we cannot reasonably conclude, and Naartex does not here contend, that any "tortious injury" in the District forms the basis for this action. Personal jurisdiction may be exercised over the private defendants, therefore, only if they "transact[ed] business" in the District in connection with the operative facts of this action.

13/ Opposition of Plaintiff Naartex to Defendants' Motion to Dismiss the Amended Complaint at 39.

Naartex puts forward three possible "contacts" that they say establish the basis for personal jurisdiction over the defendants. First, they point to an office located in the District, operated by defendant American National Resources Company, where defendant Michigan Wisconsin Pipeline Company lists its name on the door and maintains a D.C. Telephone listing. See Naartex Brief at 20-21. Yet Naartex has failed to allege any activities emanating from this office that gave rise to its claims in this case. Furthermore, according to the uncontradicted affidavit of Daniel F. Collins, the office "monitor[s] legislative and regulatory matters" and "maintains[s] official contacts with the

Congress and the executive branch." Joint Appendix of Appellees (J.A.A.) at 31.

Until recently, we thought - as the district court here ruled - that under the law of the District of Columbia, personal jurisdiction could not be founded upon any kind of "government contacts," i.e., "getting information from or giving information to the government, or getting the government's permission to do something." Investment Co. Institute v. United States, 550 F.Supp. 1213, 1216-17 (D.D.C. 1982); see Naartex Consulting Corp., 542 F. Supp. at 1199; see also Fandel v. Arabian American Oil Co., 345 F.2d 87, 89 (D.C. Cir. 1965); Ramamurti v. Rolls-Royce, Ltd., 454 F. Supp. 407,

410-11 (D.D.C. 1978), aff'd mem., 612 F.2d 587 (D.C. Cir. 1980). Indeed, in 1978, the District of Columbia Court of Appeals, sitting en banc, said:

> to permit our local courts to assert personal jurisdiction over nonresidents whose sole contact with the District consists of dealing with a federal instrumentality not only would pose a threat to free public participation in government, but also would threaten to convert the District of Columbia into a national judicial forum.

Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc., 355 A.2d 808, 813 (D.C. 1976). That holding would certainly preclude personal jurisdiction over American Natural Resources and Michigan Wisconsin Pipeline in this case. Two years later, however, a panel of the same court appeared to limit the "government contacts" exception to activities implicating first amendment

rights. See Rose v.Silver, 394 A.2d 1368, 1373-74 (D.C. 1978). In denying rehearing en banc in the Rose case, the full court failed to explain or reconcile the apparent conflict with the Environmental Research opinion, one judge finding none, and two other judges calling for the explicit rejection of the panel opinion in Rose. See Rose v. Silver, 398 A.2d 787 (D.C. 1979). Since that time, the court has failed to clarify any possible conflict. In as much as the denial of rehearing is evidence that no irreconcilable tension exists between the en banc opinion and a subsequent panel opinion, and considering that a panel of the District of Columbia Court of Appeals "is prohibited from issuing an opinion which conflicts materially with a prior decision of [the

full] court as this may be done only by the court sitting en banc," Rose v. Silver, 398 A.2d 787, 787 (D.C. 1979) (denying petition for rehearing) (citing M.A.P. v. Ryan, 285 A.2d 310 (D.C. 1971)), if it were necessary to determine what law controls today in the District of Columbia, we would still be hesitant to conclude that the clear holding against governmental contacts as a basis for personal jurisdiction in Environmental Research no longer controls. See Bernhardt v. Polygraphic Co. of America, 350 U.S. 198, 204-05 (1956); id. at 209-12 (Frankfurter, J., concurring.)

Fortunately, if there is any tension between Environmental Research and Rose, we need not resolve it, because in this case all relevant activities upon which Naartex seeks to base its claim - contacts upon which they must also rely to establish long-arm jurisdiction under the section 423(a)(1) "transacting business" provision, see, e.g., Berwyn Fuel, Inc. v. Hogan, 399 A.2d 79, 80 (D.C. 1979) (per curiam); Bueno v. La Compania Peruana de Radiodifusion, S.A., 375 A.2d 6, 9 (D.C. 1977); D.C. Code §13-423(b) - implicate the first amendment guarantee "to petition the Government for redress of grievances" and so would qualify for exemption under the Rose test as well. U.S. Const. amend. I. Naartex contends that American Natural

Resources and Michigan Wisconsin "made personal appearances before the Interior Department" as a part of their allegedly fraudulent scheme, and that this activity forms the basis for personal jurisdiction. Naartex Brief at 21. These appearances, made in an attempt to influence government action as to lease W-50394, undoubtedly qualify as exercise in petitioning the government. See, e.g., California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972) ("Certainly the right to petition extends to all departments of Government."); Doe v. McMillan, 566 F.2d 713, 718 (D.C. Cir. 1977) ("This right is not limited to petitioning Congress but extends to administrative agencies and to the courts."), cert. denied, 435 U.S. 969 (1978).

Further, Naartex claims that American Natural Resources and Michigan Wisconsin made their administrative appearances "not in order to engage in privileged lobbying activities, but simply to protect the[ir] lease." Naartex Brief at 21. However, the companies' defense of their rights before a governmental body is no less a "petition" simply because they sought to protect their proprietary interests from an adverse regulatory decision, or because Naartex in this action seeks to strip them of those very interests. A different case might be presented had Naartex made credible and specific allegations in the district court that the companies had used the proceedings as an instrumentality of the alleged

fraud. The hour has passed for Naartex to raise such allegatios now.14/

14/ In the district court, Naartex argued: "[i]f, as the plaintiff contends, the defendants joined a conspiracy to defraud the public and the Department, those acts were intended to have significant impact in this District, without question. Thus all defendants are properly before the court in this case." Opposition of Plaintiff Naartex to Defendants' Motion to Dismiss the Amended Complaint at 39. In its amended complaint, Naartex alleged that "RSC implemented [its] multiple filing scheme pursuant to a conspiracy with defendants Harrell, Michigan Wisconsin, American and General." Amended Complaint ¶36, reprinted in N.A. at 7. Both statements, and numerous others made in the district court, intimate that the conspiracy Naartex sought to redress occurred outside the disrict - most likely in Wyoming, where the lottery and the alleged multiple filings took place. Naartex now appears to alter its view of the facts in order to obtain personal jurisdiction over the defendants. See Naartex Brief at 15 ("in the District of Columbia, where the fraud clearly occurred"); id. at 25 ("the most substantial part of the private defendants fraudulent acts occurred here [in the District of Columbia]").

Finally, Naartex claims that RSC has submitted to service of process in the District by registering "to do business" here. Naartex Brief at 21. As we noted above, however, Naartex must also show that RSC's contacts with the District form at least part of the basis for its claims. Naartex has failed to do so here.

We also note that Naartex lists thirteen private defendants in its complaint - all nonresidents of the District - but alleges no "contacts" with the District concerning ten of them, beyond the bald speculation that these ten were "alleged co-conspirators." Id. at 22. Such a conclusionary statement does not constitute the prima facie

showing necessary to carry the burden of establishing personal jurisdiction. See, e.g., McLaughlin v. McPhail, 707 F.2d 800, 806 (4th Cir. 1983) ("bare allegation" of "fraudulent conspiracy" insufficient); Greenspan v. Del E. Webb Corp., 634 F. 2d 1204, 1208 n.5 (9th Cir. 1980) ("a plaintiff must allege specific acts connecting defendant with the forum"); Lehigh Valley Industries, Inc. v. Birenbaum, 527 F.2d 87, 93-94 (2d. Cir. 1975) ("the bland assertion of conspiracy or agency is insufficient to establish [personal] jurisdiction").

Naartex next asserts that the district court committed reversible error by denying permission to conduct additional discovery for the purpose of establishing

personal jurisdiction. Discovery under the Federal Rules of Civil Procedure is, of course, broad in scope and freely permitted. See Fed. R. Civ. P. 26(b)(1) advisory committee note. At the same time, however, "[a] district court has broad discretion in its resolution of discovery problems that arise in cases pending before it." In re Multi-Piece Rim Products Liability Litigation, 653 F.2d 671, 679 (D.C. Cir. 1981). The district court did not abuse its discretion when, as here, Naartex had "ample

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15/ In its brief, Naartex argues that it had no adequate opportunity for discovery because it "served its discovery requests within a month of the filing of the last motion to dismiss." Naartex Brief at 28 n.13. The time of the last motion to
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opportunity" to take discovery15/, Zerilli v. Smith, 656 F.2d 705, 716 (D.C. Cir. 1981), and the pleadings contained no allegations of specific facts that could establish the requisite contacts with the District, see McLaughlin v. McPhail, 707 F.2d at 807 ("Finding no prima facie

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dismiss is irrelevant to the question whether Naartex was afforded sufficient opportunity for discovery. Naartex was put on notice that personal jurisdiction would be challenged over six months before the dismissal of this case. See Memorandum in Support of Defendants' Joint Motion for Extension of Time, and Suggestion to the Court at 1 (filed Sept. 2, 1981) ("The undersigned defense counsel, having reviewed the complaint, believe that several initial dispositive defenses exist with regard to the allegations of the complaint. These defenses include . . . lack of personal jurisdiction . . .").

showing of conspiracy . . . the district court properly exercised its discretion in denying the discovery"); Lehigh Valley Industries, 527 F.2d at 93-95 ("no abuse of discretion in the denial of discovery" in face of "the bland assertion of conspiracy"). We accordingly uphold the district court's determination that the private defendants were not subject to personal jurisdiction in the district, and its denial of further discovery.16/

16/ Naartex also contends that further discovery was essential to establish whether an implied right of action exists under the Mineral Leasing Act. See Naartex Brief at 25-27. Because the question whether to imply a private statutory right of action primarily concerns legislative intent - and not the particular facts of any given case - this contention lacks any merit.

We also approve the district court's finding that these defendants are "indispensible parties" within the ambit of Fed. R. Civ. P. 19(b). Numerous cases hold that "an action seeking rescission of a contract must be dismissed unless all parties to the contract, and others having a substantial interest in it, can be joined." Acton Co. v. Bachman Foods, Inc., 668 F.2d 76, 81-82 (1st Cir. 1982); see Northrop Corp. v. McDonnell Douglas Corp., 705 F.2d 1030, 1044 (9th Cir.), cert denied, 52 U.S.L.W. 3265 (1983); Crouse-Hinds Co. v. Internorth, Inc., 634 F.2d 690, 701 (2d Cir. 1980); Chiodo v. General Waterworks Corp, 380 F.2d 860, 866-67 (10th Cir.), cert denied, 389 U.S. 1004 (1967). More specifically,

parties who hold royalty interests, assignments, or interests in the title of federal leases, in the absence of special circumstances not present here, are indispensable parties in an action to cancel the lease or to try title to the lease. See, e.g., Dotty v. St. Mary Parish Land Co., 598 F.2d 885, 887-88 (5th Cir. 1979); Lomayaktewa v. Hathaway, 520 F.2d 1324, 1325-26 (9th Cir. 1975); cert. denied sub nom. Susenkewa v. Kleppe, 425 U.S. 903 (1976). All private defendants in this action hold proprietary interests in lease W-50394, which Naartex seeks to cancel. Thus these defendants are indispensable parties, and the district court properly refused to proceed with

the action in their absence, considering the availability of an alternative forum in Wyoming where personal jurisdiction might be achieved. See Fed. R. Civ. P. 19(b).

Venue and Transfer

Naartex contends that even if the district court lacks personal jurisdiction over the private defendants, the dismissal of the action constitutes an abuse of discretion. Instead, Naartex argues, the district court should have transferred the case to Wyoming, where personal jurisdiction and venue would lie.

We note, to begin with, that venue for this action does not lie in the District of Columbia. When, as here, subject matter jurisdiction "is not

founded solely on diversity of citezenship," venue lies only in "the judicial district where all defendants reside, or in which the claim arose . . ." 28 U.S.C. §1391(b). Because no defendants in this action, except perhaps the Secretary of Interior, reside in the District of Columbia, and because Naartex's claim did not arise in the District of Columbia17/, venue does not lie here.

17/ Of the many events underlying this action, the district court found only one - the rejection by Undersecretary Hodel of Naartex's petition to review the IBLA decision - that occurred in the District of Columbia. See Naartex, 542 F.Supp. at 1201. On the other hand, the great weight of significant events relating to this action occurred in Wyoming: the land is located there, and the lottery and lease issuance took place there. Furthermore, none (CONTINUED ON NEXT PAGE)

Naartex nevertheless asserts that the district court was obliged to transfer this case pursuant to 28 U.S.C. §1406(a), which provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

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of the private parties to this action reside in the District of Columbia. Thus, whether one uses the "significant contacts" test, see Lamont v. Haig, 590 F.2d 1124 (D.C. Cir. 1978), or the "place of injury" test, see Rosenfeld v. S.F.C. Corp., 702 F.2d 282, 284 (1st Cir. 1983) (quoting D.N.H. 1973)), the claim in this case undoubtedly arose in Wyoming. See Leroy v. Great Western United Corp., 443 U.S. 173, 185-86 (1979).

A court may transfer a case to another district even though it lacks personal jurisdiction over the defendants. See, e.g., Goldlawn, Inc. v. Heiman, 369 U.S. 463, 466 (1962). The decision whether a transfer or a dismissal is in the interest of justice, however, rests within the sound discretion of the district court. See, e.g., Cook v. Fox, 537 F.2d 370, 371 (9th Cir. 1976); Hayes v. RCA Service Co., 546 F. Supp. 661, 665 (D.D.C. 1982). See generally 15 Wright & Miller, Federal Practice and Procedure §3827, at 170 (1976). We find that the district court did not abuse its discretion by dismissing this action, because as explained below, Naartex failed to show that its claims - both the implied

statutory right of action and the common law fraud claims - could properly be heard in any federal court. In light of the substantive problems with its asserted claims, Naartex's additional objection that the case should have been transferred to another federal court is likewise without merit.

First, the Mineral Leasing Act of 1920 does not create an implied right of action against the private defendants. As noted many times, when determining whether an implied right of action exists under a federal statute, legislative intent is the dispositive factor. See, e.g., Jackson Transit Authority v. Local Division 1285, Almagamated Transit Union, 457 U.S. 15, 22 (1982); Transamerica

Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 24 (1979).

In enacting the Mineral Leasing Act, Congress did not express any intention to create a statutory private right of action to enforce compliance with the disclosure requirements found in the DOI lease lottery regulations. Congress' central purpose in enacting the Mineral Leasing Act was the establishment of an orderly system by which the federal government could control the leasing of public land:

> Prior to 1920, oil and gas rights in public lands were acquired in the same way as rights in other minerals - by a form of "location." One staked out a location and prospected for oil or other minerals; upon making a discovery, he became entitled to a patent to the land as well as the minerals.
> . . . .

> The Mineral Leasing Act of 1920 changed the precedure for acquiring oil and gas rights in public lands: The Secretary was empowered to issue prospecting permits and required, in the event a discovery was made under the permit, to isue a lease . . .

Udall v. Tallman, 380 U.S. 1, 21-22 (1965)18/: see also California Co. v. Udall, 296 F.2d 384, 388 (D.C. Cir. 1961) ("The Act was intended to provide wise development of these natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public.") Accordingly, the statutory scheme confers upon the Secretary

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18/ In 1935, Congress eliminated the prospecting permit system and instituted the present direct leasing system. Act of August 21, 1935, 49 Stat. 676, 677, 30 U.S.C. §§223, 226.

of Interior authority to administer the leasing program as "the statutory guardian of this public interest." Id. (footnote omitted). The Secretary, and not the citizenry at large, was intended to oversee the proper allocation and development of the public lands.

Furthermore, section 27 of the Act expressly authorizes cancellation of the lease, acquired in violation of the Act only through an "appropriate proceeding instituted by the Attorney General." 30 U.S.C. §184(h)(1). Considering the "elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it," Transamerica Mortgage Advisors, Inc. v.

Lewis, 444 U.S. 11, 19 (1979), we hold that no implied cause of action of the sort Naartex asserts exists under the Mineral Leasing Act.19/ See National

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19/ Naartex asserts that, in the absence of an implied right of action, there will be "no real deterrent" to fraudulent lease applications. We disagree. First, 18 U.S.C. §1001 makes it a crime punishable by up to five years imprisonment and $10,000 fine "knowingly and willfully [to] conceal [] or cover [] up by any trick, scheme or device a material fact, or [to] make [] any false, fictitious or fraudulent statements or representations" in "any matter within the jurisdiction of any department of agency of the United States." Mindful of this prohibition, the BLM has directed its officers to refer fraudulent lease applications for "investigations for prosecutions under 18 U.S.C. 1001." 43 C.F.R. §3112.6-1(e) (1982). Also, fruadulent applications will often violate the mail and wire fraud statutes. See 18 U.S.C. §§1341, 1343.

Finally, the BLM system of protests and cancellation offers a substantial (CONTINUED ON NEXT PAGE)

Railroad Passenger Corp. (Amtrack) v. National Association of Railroad Passengers, 414 U.S. 453, 458 (1974) ("when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies"); Pullman v. Chorney, 712 F.2d

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deterrent. The 30-day time limitation for protests is tolled so long as the fruad is concealed. When a party "has been injured by fraud and 'remains in ignorance of it without any fault or want to diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered . . .'" Holmberg v. Armbrecht, 327 U.S. 392, 397 (1946) (quoting Bailey v. Glover, 88 U.S. (21 Wall.) 342, 348 (1874)). And it is well established that "[t]his equitable doctrine is read into every federal statute of limitations." Id.; see Fitzgerald v. Seamans, 553 F.2d 220, 228 (D.C. Cir. 1977); ILGWU v. NLRB, 463 F.2d 907, 922 (D.C. Cir. 1972).
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447, 449-50 (10th Cir. 1983) (finding no private right of action under the Mineral Leasing Act because "the Act itself implies that there should

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In this case, however, neither Naartex nor Huff filed a protest within 30 days after a reasonably diligent person would have discovered the suspected fraud related to lease W-50394. As noted supra at 4, Geosearch instituted a protest very similar to this one on January 25, 1979, almost eight months before Naartex initiated its protest. The Geosearch protest put Huff on notice that the lease mifht have been fruadulently obtained. Also, despite the close identity of the two corporations, the pendency of the Geosearch action does not toll the 30-day limit for Naartex, because BLM dismissed the protest due to Geosearch's failure to prosecute. See supra at 5. Even if the Geosearch action tolled the limitation period as to Naartex, IBLA dismissed the Geosearch protest on May 6, 1979, over four months before Naartex initiated its protest.

be no further private remedy since 30 U.S.C. §184(b) [sic] (1) (1976) authorizes the Attorney General to bring an action for the forfeiture of any lease acquired in violation of the Act.")

Naartex in its brief also objects to the district court's failure to determine "whether its amended complaint stated . . . a cause of action for fraud, misappropriation or unjust enrichment" under the common law. We believe, however, that the district court did not abuse its discretion when it failed to address, and thereby sub silentio failed to transfer, the common law fraud claim.

In the first place, Naartex itself failed to make clear in the district court that it sought to pursue a claim

for common law fraud separate and apart from its private right of action under the Mineral Leasing Act. For example, the district court concluded that Naartex had "concede[d] that its action against the private defendants assumes the existence of an implied private right of action in the Mineral Leasing Act of 1920." 542 F. Supp. at 1202. To reach this conclusion, the district court relied upon Naartex's somewhat enigmatic statement that the defendants "will not be required under the Act to disgorge these illegal proceeds unless the court recognizes a private right of action under the Act and enters a judgment based on common law fruad." Reply in support of Joint Motion for Russell Huff to Intervene or Be Joined

as a Party Plaintiff at 2 (quoted in Naartex, 542 F. Supp. at 1202). Naartex made numerous other statements in the district court that appear to place complete reliance upon a private statutory right of action in support of its claims against the private defendants. See, e.g., id. at 2-3 (Naartex and Huff "are now seeking two basic forms of relief. First is the implication of a private right of action under the Mineral Leasing Act of 1920 . . . Second, . . . plaintiff and Huff are also seeking judicial review of the decisions of the Secretary of the Interior denying plaintiff a hearing and cancellation of the lease."); Opposition of Naartex to Defendants' Motions to Dismiss the Amended Complaint at 15

("plaintiff's cause of action is not of the type traditionally relegated to state law . . . state law could not provide a remedy for plaintiff's harms."); id. at 21 (Naartex's and Huff's property right "adheres [sic] in the administrative process itself, i.e., the right to a fair, untained, oil and gas leasing program as prescribed in the Mineral Leasing Act and the regulations promulgated pursuant to the Act.") (empahsis added).

Moreover, Naartex's amended complaint does not make out any clear allegations of common law fraud. Cf. Fed. R. Civ. P. 9(b) ("the circumstances constituting fraud or mistake shall be stated with particularily"). Instead, in its complaint

Naartex repeatedly alleged regulatory violations in support of its claims against the private defendants. See Amended Complaint ¶77 (RSC's and Albrecht's lease applications "were invalid under the applicable regulations"); id. ¶87 (American Natural Resources' and Michigan Wisconsin's interests in lease obtained "in violation of Department regulations"); id. ¶116 (RSC "violat[ed] Department prohibitions against multiple filings"); id. ¶123 (RSC, Harrell, Michigan Wiscnsin, American Natural Resources, and General American Oil Co., "conspired to violate Department regulations governing the issuance and transfer of federal mineral leases"). At best, Naartex's complaint intertwined its purported common law claims and its asserted private statutory

right of action to such a degree as to shroud its common law fraud claim from the view of a reasonably diligent eye. We therefore find that the district court did not abuse its discretion in failing expressly to address the common law claims.

Furthermore, even if the district court had discerned the separate claim for common law fraud, it would properly have dismissed the claim. Because the court's federal question jurisdiction was predicated upon a nonexistent private right of action under the Mineral Leasing Act, the district court should dismiss any state claims pendent to the defective federal claim. As the Supreme Court set it down, in the absence of diversity jurisdiction, "if the federal claims are dismissed before trial, even though not

insubstantial in a jurisdictional sense, the state claims should be dismissed as well." United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966).

Of course, there might have been an independent jurisdictional basis for hearing the state claims if diversity jurisdiction had been adequately established in the Naartex amended complaint. In its amended complaint, however, Naartex neither alleged that 28 U.S.C. §1332 extended jurisdiction to the district court over this case, nor did it plead the requisite facts to establish complete diversity.20/ Because federal courts

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20/ Fed. R. Civ. P. 8(a)(1) requires that the complaint contains a short and plain statement of the grounds upon which the court's jurisdiction depends . . ." The Naartex amended complaint stated only that "[t]his court has jurisdiction in this matter
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are of limited jurisdiction, there is a presumption against the existence of

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pursuant to 28 U.S.C. §§1331(a) [federal question jurisdiction] and 1361 [mandamus jurisdiction]. . ." Amended Complaint ¶1, reprinted in N.A. at 2. No mention is made of diversity jurisdiction or 28 U.S.C. §1332.

Furthermore, the facts alleged in the amended complaint do not establish diversity jurisdiction. To establish diversity jurisdiction, one must plead the citizenship of the corporate and individual parties. Naartex failed to do so. Under 28 U.S.C. §1332(c), "a corporation shall be deemed a citizen of any state by which it has been incorporated and of the state where it has its principal place of business." Yet the Naartex amended complaint fails to allege the principal place of business for any of the corporate parties to this action. See Amended Complaint ¶¶3-15, reprinted in N.A. at 2-4. Furthermore, as to the individual defendants, Naartex alleged merely the states of residence. See Amended Complaint ¶¶8, 9, 13,
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diversity jurisdiction. See 13 Wright & Miller, Federal Practice and Procedure §§3522, 3611 (1975). Accordingly, the party seeking the exercise of diversity jurisdiction bears the burden of pleading the citizenship of each and every party to the action. See, e.g., Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978); Anderson v. Watt, 138 U.S. 694, 702 (1891). After three attempts, however,

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16, 17, reprinted in N.A. 3-4. Yet it has been held repeatedly that an allegation of residence alone is insufficient to establish the citizenship necessary for diversity jurisdiction. See 13 Wright & Miller, Federal Practice and Procedure §3611, at 706 (1975), and cases cited therein.

and after notice that diversity jurisdiction should be shown, Naartex failed to meet this burden.21/ We therefore find the

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21/ Naartex sought leave to file a second amended complaint on March 15, 1982. Four months earlier, defendant RSC had brought to the district court's attention the first amended complaint's deficiency in pleading diversity jurisdiction. See Statement of Points and Authorities in Support of [RSC's] Motion for Judgment on the Pleadings at 12-13 (Asserting that "Naartex's amended complaint fails to properly allege the facts upon which this Court could exercise diversity jurisdiction" and pointing out that "a plaintiff must allege both a corporate defendant's state of incorporation and the state wherein its principal place of business is located") (emphasis in original). In its pleadings, Naartex claimed that its second amended complaint would "meet RSC's objections to the jurisdictional allegations of the amended complaint." Opposition Complaint at 37. The second amended complaint, however, failed to remedy this defect entirely, see Second Amended Complaint ¶14 (no allegation of Panhandle Western Gas Company's principal place of business), and (CONTINUED ON NEXT PAGE)

district court would have been justified in dismissing the common law claim on this alternative gound.

Finally, we note that Naartex did not allege all the elements necessary to make out a common law fraud action. In order to state a claim for common law fraud, the plaintiff must allege that the fraud caused him damage: "neither fraud

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persisted in alleging the "residence" rather than "citizenship" of individuals, see id. ¶¶3, 8, 9, 13, 16, 17. While we are cognizant that "[d]efective allegations of jurisdiction may be amended," 28 U.S.C. §1653, courts are not obliged to indulge litigants indefinitely, especially when their amendments constitute futile gestures. See Foman v. Davis 371 U.S. at 182; Jackson v. Salon, 614 F.2d 480, 492 (10th Cir. 1979); Holman v. Carpentry Technolcgy Corp., 484 F. Supp. 406, 409 (E.D. Pa. 1980), and cases cited therein.

without damage nor damage without fraud is sufficient to support an action." 37 Am. Jur. 2d, Fraud & Deceit §12, at 34; see Securities and Exchange Commission v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 192 (1962); Mariner Water Renaturalizer of Washington, Inc. v. Aqua Purification Systems, Inc. 665 F.2d 1066, 1070-71 (D.C. Cir. 1981). Furthermore, damages are "restricted in all cases to such damages as were the natural and proximate consequences, or the direct consequences, of the fraud, and to such damages as can be clearly defined and ascertained." 37 Am. Jur. 2d, Fraud & Deceit §343, at 461; see Day v. Avery, 548 F.2d 1018, 1028 (D.C. Cir. 1976), cert. denied. 431 U.S. 908 (1977).

Naartex, however, has failed to allege "any causal connections between the [fraud] and the injury which [Naartex] charges." Day v. Avery, 548 F.2d at 1028. This court recently described the workings of the simultaneous oil and gas lottery:

> All applications filed before the deadline are deemed to have been filed simultaneously, and the BLM office holds a drawing early in each month to award the leases. Three applications are drawn for each parcel. If the person filing the first-drawn application qualifies to hold the lease, the lease is awarded to that person; if not, it is awarded to the second-drawn applicant, and so forth.

Lowey v. Watt, 684 F.2d 957, 960 (D.C. Cir. 1982). Russell Huff, whose interest Naartex seeks to represent in this action, was not one of the three applicants selected in the 1975 lottery for lease

W-50394. Accordingly, in the absence of the alleged fraud, the lease would have been assigned to the second or third drawn applicants, and not to Huff. thus, the alleged fraud could possible have caused Huff any damage only if the second and third drawn applicants were also unqualified to receive lease W-50394, in which case "the lands under consideration would again be put up for lease in the next drawing." Geosearch, Inc. v. Andrus, 508 F. Supp. 839, 843 (D. Wyo. 1981). Because Naartex did not allege that the second and third drawn applicants were not qualified to receive lease W-50394, therefore, the complaint failed to make out the causation and damage elements

necessary to support a claim for common law fraud.22/

22/ Naartex could conceivably have alleged that the presence of unqualified applicants in the lottery reduced Huff's chances of placing among the first three applicants selected. But even this characterization of causation and damage does not survive scrutiny. First, the regulations provide for review of the qualifications of applicants only after the selection takes place. See 43 C.F.R. §3112.6-1 ("Rejection is an adjudicatory process which follows selection"). The lottery rules do not prohibit the expansion of the applicant pool by applicants who might, for example, have exceeded the allowable acreage limitation, see id. §3101.1-5(a), or who are not citizens of the United States, see id. §3102.2, or, as here, who entered a service agreement later found to be an "interest" in the lease application. The rules of the lottery, therefore, do not establish a legally protected interest in a pristine applicant pool. Moreover, it is elementary that "speculative" damage will not support an action for common law fraud. See, e.g., Day v. Avery, 548 F.2d at 1028; 37 Am. Jur., Fraud & Deceit §343, at 461. Naartex's notion that the alleged fraud by Albrecht and RSC deprived Huff of lease W-50394 is indeed quite speculative.

To sum up, we find that the district court acted within its sound discretion when it dismissed the claims asserted against the private defendants. We now turn to review the district court's dismissal of the claims against the government.

III. THE CLAIMS AGAINST THE GOVERNMENT

In three counts of its complaint23/, Naartex seeks declaratory and mandamus relief against the Secretary of the Interior. In so doing, Naartex purports to assert the rights of Russell Huff; Naartex itself did not participate in the 1975 lottery. The district court found such vicarious claims to be "a classic violation of the federal

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23/ See Amended Complaint ¶¶44-73, reprinted in N.A. 9-14 (Counts I-III).

anti-assignment laws." 542 F. Supp. at 1203. We agree.

Section 3727 (formerly 203) of title 31 provides that "a transfer or assignment of any part of a claim against the United States Government or of an interest in the claim" may be made "only after [the] claim is allowed, the amount of the claim decided, and a warrant for payment of the claim has been issued." Furthermore, any such assignment "must be attested to be 2 witnesses." 31 U.S.C. §3727(b). Huff's agreement by letter to "sell, assign and transfer to [Naartex] all of [Huff's] rights in and to lease #W-50394"24/ clearly contravenes these provisions. Such inchoate interests in the government

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24/ Letter from Russell Huff to Naartex at 2 (Sept. 10, 1979).

lease may not be assigned, and, in any event, the attempted assignment was not witnessed as required by the statute.

In addition, Section 15 of title 41 provides that "[n]o contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party . . ." this section evidently prohibits the transfer of Huff's asserted "interest" in lease W-50394 to Naartex.25/

25/ 41 U.S.C. §15 also provides that "any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned." Because of the disposition of this case on other grounds, and because the parties did not address the issue in briefs or at argument, we need not decide whether this provision operates to extinguish Huff's claims against the government altogether.

Naartex argues that these provisions do not apply to the Huff assignment because "the policies of the anti-assignment provisions have not been violated" in this instance. Naartex Brief at 44. Yet for almost a century it has been repeatedly emphasized that a central purpose of both 31 U.S.C. §3727 and 41 U.S.C. §15 was "that the government might not be harassed by multiplying the number of persons with whom it had to deal." Hobbs v. McLean, 117 U.S. 567, 576 (1886); see United States v. Shannon, 342 U.S. 288, 291-93 (1952); Scanwell Laboratories, Inc. v. Thomas, 521 F.2d 941, 944 n.2 (D.C. Cir. 1975), cert. denied, 425 U.S. 910 (1976). The Huff assignment unquestionably violates this clearly articulated policy.

Naartex further contends that, in the event the anti-assignment laws invalidate the Huff assignment, the district court should have permitted Huff to be joined in order to pursue his own claims. While the district court acted properly in denying Naartex's motion to join Huff as a party plaintiff, we disagree with certain reasons offered by the court in support of the denial.

The district court refused to permit Huff to intervene in part because "[t]he attempt to add Huff as a party plaintiff represents an obvious effort to revitalize a suit which Naartex would otherwise have no basis for litigating due to the operation of the anti-assignment laws." 542 F. Supp. at 1205. This ruling,

however, overlooks the mandate of Fed. R. Civ. P. 17(a):

> No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Because the Anti-Assignment laws invalidate Huff's attempted transfer of his claims against the government to Naartex, he may represent the "real party in interest" in this action. In such cases, as a general rule, joinder within a reasonable time should be permitted, and the complaint may be amended, substituting the new plaintiff.

In this case, however, the district court's denial of the joinder motion was justified by additional considerations. The Supreme Court has concluded that leave to amend pleadings, which is necessary to effectuate the joinder of a party plaintiff, need not be granted when such action would be "futil[e]." Foman v. Davis, 371 U.S. 178, 182 (1962); see Parker v. Baltimore & Ohio Railroad Co., 652 F.2d 1012, 1018-20 (D.C. Cir. 1981) (reviewing proposed amendment to determine whether amendment would be futile); In re Ampicillin Antiturst Litigation, 82 F.R.D. 647 (D.D.C. 1979). The district court correctly determined that the joinder of Huff to assert his claims against the government "would be utterly futile." 542 F. Supp. at 1206.

Lease W-50394 became a producing lease in 1977. See supra at 4. According to 43 C.F.R. §3108.3(b) (1982), "[a] lease known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in section 27 and 31 of the Act." Similarly, under 30 U.S.C. §188(b), leases are "subject to cancellation by the Secretary of Interior . . . unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas." Therefore, as the district court observed, "[l]ease W-50394 cannot be cancelled administratively because it is a currently-producing oil and gas lease." 542 F. Supp. at 1205. A producing lease may be cancelled only through an

"appropriate proceeding instituted by the Attorney General," 30 U.S.C. §184(h)(1), or "an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located," id. §188(a). Mr. Huff is not the Attorney General and lease W-50394 does not cover land in the District of Columbia. We therefore find that the district court acted properly in denying the joinder of Huff to this action because such joinder would have been futile.

Finally, as we noted above, see supra at 14-15, the private defendants constitute indispensable parties to the action to cancel the lease. Because the private defendants could not properly be haled before the district court, see

supra at 8-13, then, the entire action must be dismissed.

The district court thus correctly dismissed the claims against the government.

IV. CONCLUSION

For the reasons set forth above, the order of the district court dismissing this action is

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82-1979 September Term, 1983
Civil Action No.
Naartex Consulting Corporation, 81-01540

Appellant

Filed November 29, 1983
Russell Huff George A. Fisher, Clerk

v.

James E. Watt, Secretary of Interior, et al.

O R D E R

It is ORDERED, sua sponte, that the Clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See Local Rule 14, as amended on November 30, 1981 and June 15, 1982. This instruction to the Clerk

is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.

For the Court

George A. Fisher
Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NAARTEX CONSULTING CORP.,	)	
Plaintiff,	)	
v.	)	Civil Action No. 81-1540
JAMES E. WATT, Secretary of Interior, et al.	)	Filed June 8, 1982
Defendants.	)	James F. Davey, Clerk

MEMORANDUM OPINION

This matter is before the court on both governmental and private defendants' motions to dismiss and on the joint motion of plaintiff and Russell Huff to intervene as a party plaintiff and to file a second amended complaint adding Russell Huff as a party plaintiff. For the reasons expressed below,

defendants' motions are granted and plaintiff's and Russell Huff's motion is denied.

I. Facts

Under the Department of the Interior's simultaneous oil and gas leasing program, administered pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §226(c), all offers to lease particular classes of parcels, are considered as having been simultaneously filed. Priority among the parcels is determined by a random drawing in which three applications are selected. The lease is awarded to the first qualified application of the three offers chosen. if all three applications are not

qualified under DOI's regulations, no lease is issued and a new drawing is held.

In the case at bar, a drawing was held and lease number W-50394 was issued to the first of the three applications chosen at random, an application submitted by Norbert F. Albrecht. The lease was issued in March, 1974. Various assignments of drilling rights, reservations and transfers of royalty interests have occurred, which accounts for the large number of private defendants involved in this suit.

On January 25, 1979, Alvin Abrams, president of Geosearch, Inc. filed, in the Bureau of Land Management (BLM), a protest against the issuance of the lease to Albrecht. The basis for

the protest was that Albrecht had a service agreement with Fred Engle, d/b/a Resource Service Company, a defendant in this suit, in violation of Interior Department regulations. In support of the protest, Abrams contended he was representing the entire class of persons who had filed unsuccessful offers for lease W-50394. On February 6, 1979, the BLM dismissed the protest on various grounds. Geosearch filed a notice of appeal and this appeal was dismissed by the Interior Board of Land Appeals (IBLA) on May 6, 1979, because no statement of reasons for the appeal had been filed.

On September 19, 1979, Abrams filed a second protest, this time as president of Naartex Consulting Corporation, plaintiff in the instant

suit. this protest was based upon an agreement between Naartex and Russell Huff, another unsuccessful applicant for the lease in question. The agreement provided that in consideration for the transfer to Huff's interest in the lease to Naartex, Naartex would attempt to vindicate the "rights of all members of the class of persons who filed offers," through proceedings before the DOI and federal and state courts and would pay Huff 25% of the gross amount realized through its efforts.

On September 28, 1979, the BLM dismissed Naartex' [sic] protest. Naartex' appeal from this decision on October 29, 1979 was dismissed by the IBLA on June 9, 1980. On September 8, 1980, plaintiff petitioned the Board of Land Appeals to reconsider its initial decision dismiss-

ing plaintiff's appeal; the petition for reconsideration was denied by the IBLA on September 16, 1980. Finally, on December 12, 1980, plaintiff filed a petition with the Secretary of the Interior to review the decision of the IBLA; this petition was denied on April 6, 1981.

The instant suit was commenced on July 6, 1981, contending that the agency's denial of relief constituted an abuse of discretion, and seeking to have the agency's decisions set aside and the lease in question cancelled. Plaintiff also seeks to have the court find that the private defendants committed fraud

in violation of the Mineral Leasing Act and order that the defendants' ill-gotten gains be paid into a suspense account with the court or other appropriate party.

This action must be dismissed for a number of compelling reasons.

II. Discussion

A. Jurisdiction and Venue

The District of Columbia Code sets out a number of possible basis for the exercise of in personam jurisdiction over corporations and persons not having their principal place of business or residence in the District. Since there is no suggestion that there has been any tortious injury in the District, the only plausible basis for an exercise of

jurisdiction over the private defendants in this case is that they transact business in the District. D.C. Code §13-423(a)(4). For this basis to apply, plaintiff must demonstrate not only that the defendants have transacted business in the District, but also that claims pursued by plaintiff arose out of the business transacted here. D.C. Code §13-423(b); see generally Security Bank, N.A. v. Tauber, 347 F. Supp. 511 (D.D.C. 1972).

Most private defendants contend that they do not transact business here and that none of plaintiff's claims arise from any scattered contacts they may have had with the District in the past. A few of the private defendants

acknowledge that they do have certain contacts with the District, but, by way of affidavits, these defendants have sworn that any contacts with the District are limited to involvements with the federal government. See Affidavit of American Natural Resources Company and Michigan Wisconsin Pipeline Company. Thus, these contracts would fall within the "government contacts" exception to the District of Columbia long-arm statute and would not qualify these private defendants for in personam jurisdiction. See, e.g., Siam Kraft P. Co. Ltd. v. Parsons & Whittemore, Inc., 400 F. Supp. 810 (D.D.C. I975), aff'd, 521 F.2d 324 (D.C. Cir. 1975).

Plaintiff contends that it should be permitted to conduct discovery

before the court concludes that it cannot exercise jurisdiction over the private defendants. This response is unpersuasive. First, plaintiff's complaint has not even alleged facts that would allow the court to conclude that there is personal jurisdiction over most of the private defendants. Even granting plaintiff's complaint the most liberal construction and furnishing it "the benefit of all inferences that can be derived from the facts alleged," Schuler v. United States, 617 F.2d 605, 608 (D.C. Cir. 1979), the complaint does not withstand the motions to dismiss by most of the private defendants. See 4 C. Wright & A. Miller, Federal Practice and Procedure, §1068 at 250 (1969); American Contract Designers, Inc. v. Cliffside,

Inc., 458 F. Supp. 735 737 (S.D.N.Y. 1978); Ghazoul v. International Management Services, Inc., 398 F. Supp. 307, 309 (S.D.N.Y. 1975).

In these circumstances, allowing plaintiff to conduct even limited discovery into the contacts of private defendants with the District would be unjustified. Plaintiff has not alleged the "'threshold' jurisdiction sufficient to demonstrate the fairness of allowing the suit to continue." American Contract Designers, Inc. v. International Cliffside, Inc., supra, 458 F. Supp. at 735. Moreover, even as to those defendants for whom plaintiff's complaint alleges business contacts with the District, discovery cannot be authorized. As noted, these defendants, the Natural

Resources Company and Michigan Wisconsin Pipeline Company, have, by way of affidavit, indicated that any contacts with the District were restricted to participation in governmental operations. Plaintiff has not challenged these contentions with specific facts in affidavits, nor has it explained in an affidavit why it needs to conduct discovery in order to justify its opposition to defendant's motion, as required by the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 56(e), (f).

Finally, even if there were some legitimacy to plaintiff's contention that it needs discovery to demonstrate personal jurisdiction, it appears that plaintiff has already been given "an adequate opportunity to obtain informa-

tion through discovery." Vespe Contracting Company v. Anvan Corp., 433 F. Supp. 1226, 1233 n.9 (E.D. Pa. 1977); Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 151 (D.D.C. 1976). Plaintiff filed its original complaint on July 6, 1981. The first of the private defendants received service in early July, 1981. Plaintiff sought no discovery at that time, either in the form of interrogatories or requests for production of documents. Nor did the plaintiff seek to depose any of the private defendants in July or August pursuant to Federal Rule of Civil Procedure 30(a). Further, the record reflects that the private defendants notified Naartex at least by September 4, 1981, that they were planning to file dispositive motions

based, at least in part, on a lack of in personam jurisdiction. Despite the fact that plaintiff suggested the schedule for briefing of defendants' motions that was approved by the court on October 23, 1981, plaintiff made no attempt to initiate any discovery prior to the filing of the private defendants' motions to dismiss on November 23, 1981. on Naartex' motion, the court extended the time in which plaintiff could respond to the motion to dismiss until January 15, 1982; at this stage, plaintiff still made no effort to initiate discovery and did not suggest that it needed to conduct discovery in order to oppose defendants' motions. The court denied plaintiff's motion for an extension of time to respond to defendants' motions on

February 25, 1982. Thus, the record indicates that for close to six months the plaintiff refrained from pursing the discovery it now contends is so essential to effective opposition to defendants' motions; for approximately four of these months, plaintiff was on specific notice that defendants intended to raise the defense of lack of personal jurisdiction. Accordingly, plaintiff cannot genuinely contend that it did not have sufficient opportunity to conduct the "limited discovery" it now seeks, and the court is more than justified in dismissing all the private defendants from this suit.

Venue with respect to the claims against the private defendants is purportedly grounded in 28 U.S.C. §1391(b). 28 U.S.C. §1391(e), may

provide a basis for venue over the claims against the Secretary of the Interior but does not furnish an independent basis for venue over the private litigants. See Lamont v. Haig, 590 F.2d 1124 (D.C. Cir. 1978).

Section 1391(b) provides that a civil action not founded solely on diversity of citizenship (such as this one) may be brought only in the judicial district where all defendants reside "or in the judicial district where the claim arose." Obviously, all the defendants do not reside in this district. Thus, venue is only proper here if the "claim arose" in this jurisdiction, as plaintiff's complaint concedes. See Amended Complaint at ¶2.

The proper interpretation of the language "in which the claim arose"

is somewhat unclear. The most recent discussion of the provision in this Circuit is that found in Lamont v. Haig, 590 F.2d 1124 (D.C. Cir. 1978). In that case, the court adopted a rather pliable, practically-oriented interpretation of the pertinent language. The court endorsed the view that section 1391(b) confers venue in a district where a "substantial portion of the acts, or omissions giving rise to the actions occurred, notwithstanding that venue might also lie in other districts. Id., at 1134. The court stressed that venue considerations should be attuned as much as possible, to achieving the most efficient strategy for conduct of the lawsuit; the district court must engage in a "commonsense appraisal" of the implications of pertinent events for

accessibility to witnesses and records. Id., at 1134; see also Florida Nursing Home Association v. Page, 616 F.2d 1355, 1361 (5th Cir. 1980).

Subsequent to Lamont, the Supreme Court has apparently adopted a more restrictive view of the scope of section 1391(b). In Leroy v. Great Western United Corp., __U.S.__, 00 S. Ct. 2710 (1979), the Court declined to hold that there can only be one district where a claim "arose," but indicated that only in quite unusual situations will there be more than one district which can be considered the locus of the claim. Id., at 2718. In the rare circumstances where there are two districts of "approximately equal plausibility - in terms of the availability of witnesses, the accessibility of other relevant evidence

and the convenience of the defendant," the plaintiff may choose either district. Id.

Thus, while Leroy is a rather opaque opinion, it does appear to authorize quite a different approach than that enunciated in Lamont. Instead of allowing the plaintiff to select any district in which relevant actions "were not insubstantial," Lamont v. Haig, supra, at 1134 n. 62, Leroy provides that venue is proper only in the district where the most substantial actions occurred; only if this determination is unclear can a plaintiff choose between forums. Fortunately, this court is not required to resolve the discrepancies between Lamont and Leroy in order to conclude that venue does not properly

reside in this jurisdiction with respect to the private defendants. Virtually all of the relevant events that underlie plaintiff's complaint occurred in Wyoming, including the filing of offers for the lease, the drawing of offers for the lease, the issuance of the lease and the approval of subsequent assignments by the Wyoming State Office of the BLM. Moreover, every agency action except one emanated from organs of the Department of interior located outside of the District. The only pertinent decision occurring in Washington was the decision of the Secretary declining to assume jurisdiction over plaintiff's administrative protest. See Complaint at ¶55-56. Finally, while resolution of

this case may be restricted to the administrative record, if the court looks beyond the administrative record for any reason, witnesses and evidence will almost certainly be located outside the District, most probably in Wyoming.

Clearly then, the most substantial actions material to this case took place in Wyoming. It is difficult to conceive of Washington as a district of "approximately equal plausibility," in Leroy's terms. Even applying the less rigorous standard propounded in Lamont, Washington is a district where relevant actions were "insubstantial" according to any reasonable analysis. As a result, application of either of the arguably relevant standards for

ascertaining where a claim "arose" reveals that venue does not exist in the District with regard to the private defendants.

Because personal jurisdiction and venue are lacking in the District, the private defendants argue that this action should be dismissed in its entirety for failure to join indispensable parties. This contention has substantial merit. The private defendants are certainly "persons to be joined if feasible" under Rule 19(a) of the Federal Rules of Civil Procedure. Since all of the private defendants have in the past held or presently own an interest in lease W-50394, they are persons who "claim an interest relating

to the subject of the action" which may, as a practical matter, be impeded or impaired if suit proceeds in their absence. See McKenna v. Udall, 418 F.2d 1171 (D.C. Cir. 1969).

Because the private defendants are parties that should be joined, the court must consider whether the infeasibility of joining them requires dismissal of the action. Rule 19(b) sets out the relevant factors in such a determination as: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by the shaping of relief, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's

absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. As the preceding discussion suggests, continuation of this suit in the absence of some or all of the private defendants would be likely to be significantly prejudicial to their interests. The suit seeks cancellation of the lease and the disgorgement of all allegedly fraudulently obtained profits. Such relief, if awarded by the court, would adversely impact upon the private defendants contesting personal jurisdiction and venue in the District.

Plaintiff's principal response to this line of reasoning is that, in accordance with the second factor

enumerated in Rule 19(b), the court could shape relief in such a way that the interests of particular defendants will not be materially damaged; specifically, Naartex suggests, the court could tailor its order so that only those interests of defendants still in the suit will be cancelled and only these defendants will be deprived of their fraudulently obtained profits. This response does not assest plaintiff, however, because it is clear that such piecemeal relief would not allow the court to render an "adequate" judgment, the third factor delineated in Rule 19(b). Since it is likely that most, if not all, of the private defendants must be dismissed from this suit on the basis of lack of

venue or personal jurisdiction, any final judgment directed solely at a private defendants remaining in the suit or the government will simply not be meaningful. The fact that the majority (at least) of private parties holding an interest in the lease could not have their rights adjudicated would deprive any final judgment issued by this court of real significance.

The final factor mentioned in Rule 19(b) is whether plaintiff would have an adequate remedy if the action is dismissed. It is evident that such a remedy exists in this case. Suit could easily proceed in federal court in Wyoming. The private defendants have conceded that venue and personal

jurisdiction are proper in that jurisdiction. In fact, as the previous discussion reveals, Wyoming would unquestionably be a superior forum for prosecution of this suit. A trial in Wyoming would be far more convenient for parties and witnesses. Wyoming federal courts have litigated a substantial number of suits virtually identical to the present one and are intimately familiar with the complex regulatory procedures and requirements that underlie plaintiff's claims. Thus, the court concludes that various private parties for whom joinder is infeasible are indispensable to the further conduct of this action. Suit cannot proceed "among the parties" remaining after these

private defendants are dismissed from the suit. Fed. R. Civ. P. 19(b).

B. Private Right of Action Under Mineral Leasing Act

Plaintiff concedes that its action against the private defendants assumes the existence of an implied private right of action in the Mineral Leasing Act of 1920. See Reply in Support of Joint Motion for Russell Huff to Intervene or Be Joined as a Party Plaintiff at 2 (defendants "will not be required under the Act to disgorge these illegal proceeds unless the court recognizes a private right of action under the Act and enters a judgment based on common law fraud"). An analysis of the Mineral Leasing Act and its under-

lying purposes, however, reveals that Congress did not intend to create a private right of action to police against transgressions of the Act by private parties.

The Mineral Leasing Act does not expressly vest in any person besides the Attorney General the right to bring suit to enforce the Act's provisions. A number of recent Supreme Court cases have clarified that the essential question to be answered in determining whether a private remedy is implicit in a statute is whether "Congress intended to create the remedy asserted." Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 15 (1979) (Emphasis added); see

California v. Sierra Club, U.S.__, 101 __S. Ct. 1775, 1779 (1981) (the "ultimate issue is whether Congress intended to create a private right of action"): Universities Research Ass'n. v. Coutu, __ U.S.__, 101 S. Ct. 1451, 1458 (1981); Touche Ross & Co. v. Reddington, 442 U.S. 566, 568 (1979); Cannon v. University of Chicago, 441 U.S. 677, 688 (1979). The Court has shifted away from the focus in earlier cases, see e.g., J.I. Case v. Borak, 377 U.S. 426 (1964), upon the desirability of implying the private right of action in order to effectuate the purposes of a given statute. California v. Sierra Club, __U.S.__, 101 S. Ct. at 1781 (the courts "will not engraft a remedy on a statute, no matter

how salutary, that Congress did not intend to provide"); Transamerica Mortgage Advisors, Inc. v. Lewis, supra, 444 U.S. at 15.

In determining whether Congress intended to create a private right of action, it is appropriate to first scrutinize the language of the statute itself. See Touche Ross & Co., supra, 442 U.S. at 568; Santa Fe Industries, Inc. v. Green, 430 U.S. 1 (1976). There is nothing on the face of the Mineral Leasing Act which suggests that private parties should be permitted to enforce the Act's directives. In fact, an altogether contrary conclusion must be drawn from the language of the statute. Section 27 of the Act provides

that if any interest in a lease is owned or controlled "in violation of any of the provisions of this chapter" the lease may be cancelled "in any appropriate proceeding instituted by the Attorney General." 30 U.S.C. §184(h)(1). Furthermore, the Act is replete with references to oversight responsibilities and administrative obligations vested solely in the Attorney General or the Secretary of the Interior. See generally 30 U.S.C. §188(b) (providing for administrative cancellation of lease by the Secretary); 30 U.S.C. §226(j) (authorizing Secretary to approve development contracts with leasees). It is an elementary principle of statutory construction that where a statute "limits a

thing to be done in a particular mode, it includes the negative of any other mode." Botany Mills v. United States, 278 U.S. 282 (1929). When applied to the question of legislative intent to create a private right of action, this general axiom suggests that a "statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." Transamerica, supra, 444 U.S. at 19. Therefore, the language of the Mineral Leasing Act indicates Congressional intent not to provide for private rights of action.

The legislative history of the statute is similarly unsupportive of any contention that Congress desired that

private suits for damages supplement cancellation actions by the Attorney General. Naartex offers not one shred of legislative history implying intent on the part of Congress to create a private right of action. Rather, plaintiff merely explains how a private remedy might be consistent with the underlying policies of the Mineral Leasing Act. While an independent appraisal of the value of a private cause of action may at one time have been sufficient to create such an action, see, J.I. Case v. Borak, 377 U.S. 426 (1965), the Supreme Court has recently stressed that, in the absence of any indicia of Congressional intent courts are precluded from engaging in an

automonous assessment of the desirability of private enforcement. See California v. Sierra, supra, U.S. at __, 101 S. Ct. at 1779. Since plaintiff can point to neither statutory language nor legislative history hinting at an intention to introduce private causes of action in the Mineral Leasing Act, the court can only conclude that no such action exists.

C. The Anti-Assignment Laws

The proceding discussion reveals that there are fatal defects in plaintiff's attempt to sue the private defendants, at least in this jurisdiction. Such defects are also present with regard to plaintiff's effort to secure relief from the Secretary of the Interior. Most notably, Naartex' suit against the government appears to be a classic violation

of the federal anti-assignment laws. 31 U.S.C. §203 provides that:

> All transfers and assignments made of any claim upon the United States ...shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim...

Similarly, 41 U.S.C. §15 states that:

> No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned.

It is undisputed that the government never authorized the transfer of Huff's

"interest" in Lease 50394 to Naartex.1/ Thus, it would appear that the anti-assignment provisions apply to the instant suit. The contract between Huff and Naartex assigns to Naartex the right to assert any claims Huff may have to the parcel in question, in exchange for a

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1/ In fact, Naartex has never filed an application for approval of a transfer of any interest in the offer and lease, as it was required to do by 43 C.F.R. §§3106.3-4. Furthermore, even if Naartex had filed such an application, the BLM could not have approved the transfer because Naartex never complied with controlling regulations by filing a statement of its qualifications to hold a lease, 43 C.F.R. §3106.1-2, or the required interest statement. 43 C.F.R. §3106.1-4. See Geosearch, Inc. v. Andrus, 508 F. Supp. 839, 847 (D. Wyo. 1981).

This, of course, indicates that regardless of the applicability of the anti-assignment laws to the transfer in question, Naartex has no standing to prosecute this suit because it has no valid interest in the lease or the offer. Id.

percentage of the gross recovery. Moreover, to the extent Naartex claims it has any entitlement to Lease 50395, or to secure cancellation of the lease, it is, in essence, contending that it derived a contractual right against the government from Huff. See Standard Oil Co. of California v. Hickel, 317 F. Supp. 1192, 1197 (D. Alaska 1970), aff'd, 450 F.2d 493 (9th Cir. 1971). Finally, as the government points out, the plain language of the anti-assignment laws comprehends claims to public property, such as an oil and gas lease, as well as claims to money. See generally United States v. Gillis, 95 U.S. 407, 413 (1877).

Plaintiff's response to the government's anti-assignment argument is twofold. First, plaintiff contends that

the Huff-Naartex agreement implicates none of the evils which the anti-assignment provisions are directed at. This response is without significance. As noted above, the agreement falls plainly within the wording of the anti-assignment laws. This court cannot ignore a clear statutory directive because it feels that the problems Congress had in mind will not result from a particular contractual relationship. In addition, the agreement does engender the precise evils that motivated the anti-assignment provisions. One obvious purpose of these provisions is to prevent persons with the means and disposition from buying up claims against the government and thereby proliferating suits against the government. See,

e.g., United States v. Shannon, 342 U.S. 388 (1952); Scanwell Laboratories, Inc. v. Thomas, 521 F.2d 941, 944-45 n.3 (D.C. Cir. 1975), cert. denied, 425 U.S. 910 (1975). The agreement between Huff and Naartex is a perfect example of a professional entity buying up interests of unsuccessful individual bidders less able to prosecute a suit against the government. The fact that such an agreement will result in proliferation of suits against the government can be no more evident than in the circumstances of this case. As noted, Naartex and Mr. Huff have moved to join Mr. Huff as a party plaintiff. This obviously suggests that Mr. Huff has an independent right to proceed against the government, despite the transfer of his interest to Naartex.

A more blatant example of suit proliferation is hard to imagine.

Naartex' second argument is that even if the agreement between Huff and Naartex violates the anti-assignment laws, the proper judicial remedy is not to dismiss the suit but to join Huff as the proper party plaintiff. Essentially, Naartex is contending that Huff should now be permitted to replace Naartex as the actual plaintiff at this stage of the proceedings. Naartex' and Huff's effort to salvage this suit cannot be permitted. First, it is the general rule that "intervention will not be permitted to breathe life into a 'non-existent' lawsuit." McClune v. Shamah, 593 F.2d 482 (3rd Cir. 1979). A motion

for intervention under Rule 24 is not ordinarily a proper device "to cure a situation in which plaintiffs may have stated causes of action that they have no standing to litigate." Id.; Interstate Commerce Commission v. Southern Railway Co., 380 F.2d 534 (5th Cir. 1976) (authority to bring a suit cannot be "bestowed by intervenors on an original plaintiff"). The attempt to add Huff as a party plaintiff represents an obvious effort to revitalize a suit which Naartex would otherwise have no basis for litigating due to the operation of the anti-assignment laws.

Second, the court's discretionary authority to allow an intervenor to take control of a case should only be exercised when "the intervenor has a

separate and independent basis for jurisdiction." Fuller v. Volk, 351 F.2d 323, 329 (3rd Cir. 1965). Huff lacks such an independent basis for jurisdiction because he did not appeal from the rejection of his offer to lease. Under DOI regulations, one adversely affected by a decision of the BLM can appeal to the IBLA, but such an appeal "is required to be filed within thirty days after the person taking the appeal is served with the decision from which he is appealing." 43 C.F.R. §4.411 (1979). Huff received notice that his offer had been rejected when his offer was returned in June, 1975. Thereafter, he never appealed the decision denying his bid, instead transferring his interests to Naartex. The IBLA has held that the requirement

for an appeal within 30 days is "mandatory and jurisdictional." Ilean Landis, 49 IBLA 59 (1980). Thus, even if Naartex could offer some reason why its protest and petition for reconsideration should allow it to file suit at this time, Huff has no conceivable explanation for ignoring the 30-day appeal limit. Similarly, an independent action by Huff appears to be clearly barred by the applicable statute of limitations. Section 226-2 of the Mineral Leasing Act provides that "[n]o action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matter." 30 U.S.C. §226-2 (1976). Again, Naartex

may have some plausible claim that the ninety-day statute of limitations did not begin to run until the Secretary of the Interior made the final decision not to intercede on Naartex' behalf but Huff has no rational basis for contending that the ninety-day statute of limitations with respect to his interest did not expire long ago. Thus, Huff lacks an independent basis for jurisdiction that would make him eligible to take command of this lawsuit. As a result, the potential intervention of Huff as a party plaintiff does not cure the basic flaws in Naartex' claim against the government.

D. Standing

As a final threshold matter, the court believes that neither Naartex

nor Huff has standing to prosecute this action. As noted, Naartex never filed an application for approval of a transfer of any interest in the offer and lease, as it was required to by 43 C.F.R. §§3106.3-4. Thus, Naartex does not even have a colorable claim to the lease or offer in question. See Geosearch, Inc. v. Andrus, 508 F. Supp. 839, 847 (D. Wyo. 1981). With respect to Huff, it is uncontroverted that he did not file an appeal from the issuance of the lease within thirty days, as is required by 43 C.F.R. §4.411, and, in fact, never administratively challenged the rejection of his offer. Accordingly, any interest Huff may have had in the lease that could have been sufficient to give him standing has been extinguished.

Moreover, it appears that Naartex and Huff have not demonstrated any injury that could be redressed by a favorable decision of the court. Duke Power Co. v. Carolina Env. Study Group, Inc., 438 U.S. 59 (1978); Citizens Concerned for Separation of Church and State v. City and County of Denver, 628 F.2d 1289 (10th Cir. 1980). The main relief sought by Naartex is cancellation of the lease and disgorgement of the funds fraudulently earned. It is doubtful that this court can order cancellation of the lease in question. Lease W-50394 cannot be cancelled administratively because it is a currently-producing oil and gas lease. See 30 U.S.C. §188(b). Further, the Mineral Leasing

Act expressly vests in the Attorney General complete discretion to initiate cancellation proceedings in federal court. 30 U.S.C. §184(h)(1).

In addition, even if the court could order cancellation of the lease in question, this could not tangibly benefit Naartex or Huff. Since Huff was not the second or third bidder chosen, but was in the general class of unsuccessful bidders, the lease cannot be reissued to Huff or Naartex. 43 C.F.R. §3112.1. The only possible consequences of lease cancellation are that the lease would be withdrawn, offered at a competitive bid or made available for a new simultaneous draw. 43 C.F.R. §3112.1. See Geosearch, Inc. v. Andrus, supra, 508 F. Supp. at 845. None of these exigencies would

extend any concrete benefit to plaintiff or increase in any measurable way the likelihood that the lease would ultimately be granted to Naartex or Huff. It is evident, then, that the present and prospective plaintiffs, unable to explain how any actual injury they have suffered can be remedied by this court, lack standing to prosecute this action. See Pullman v. Chorney, 509 F. Supp. 162 (D. Colo. 1981).

III. Joint Motion to Join Huff as a Party Plaintiff and Amend the Complaint

The sole purpose of plaintiff's effort to bring Huff into this lawsuit is to avoid dismissal on the grounds of violation of the anti-assignment provisions. As discussed above, see pp. 15-16, infra, Huff's application to intervene in this suit and thereby take over its prosecution

is defective on a number of grounds. For comparable reasons, Naartex' motion to amend its complaint to include Huff as a party plaintiff also lacks merit. Rule 15(a) of the Federal Rules of Civil Procedure requires that leave to amend "shall be given freely when justice so requires." The Supreme Court has indicated that two factors relevant to the determination of whether leave to amend should be granted are whether there has been "undue delay, bad faith, or dilatory motive" on the part of the movant and whether the amendment would be "futile." Foman v. Davis, 371 U.S. 178, 182 (1962). Both of these factors counsel strongly in favor of denying the motion to amend. Huff has, presumably, been aware of this action since its

inception and Naartex has obviously been familiar with Huff's interest in the suit. Despite this fact, Huff made no effort to intervene and Naartex made no effort to amend its complaint to include Huff until defendants had prepared extensive dispositive motions.2/ There is no explanation for this delay beyond that which is apparent on the record; plaintiff seeks to add Huff to this suit only in order to remove a basic threshold deficiency in Naartex' own suit.

2/ This reasoning, of course, also indicates that Huff's motion to intervene was not "timely" made, a prerequisite to intervention under Rule 24(a) of the Federal Rules of Civil Procedure. If Huff felt that he had a significant interest to protect in this suit, he presumably would not have waited until the last day Naartex was given to respond to the defendants' dispositive motions.

Independently, there are valid grounds for denying the motion to amend because the amendment would be utterly futile. Even if Huff's addition to the suit could resolve the anti-deficiency objection of the government, it would do nothing to cure the other problems associated with this lawsuit. Specifically, adding Huff to the suit would not cure the lack of personal jurisdiction or venue over the private defendants or the absence of a private cause of action under the Mineral Leasing Act. The suit would still be subject to dismissal, regardless of Huff's participation.

IV. Conclusion

This suit suffers from a number of flaws with respect to both the claims

against the private defendants and the claims directed against the government. The court must grant defendants' motions to dismiss and deny the joint motion to intervene and amend the complaint.

An appropriate Order accompanies this Memorandum Opinion.

/s/ Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NAARTEX CONSULTING CORP., Plaintiff, v. JAMES E. WATT, Secretary of Interior, et al. Defendants.	Civil Action No. 81-1540 Filed June 2, 1982 James F. Davey, Clerk

O R D E R

This matter comes before the court on numerous motions. Upon consideration of the parties' arguments and submissions, and for the reasons expressed in the accompanying memorandum opinion, it is by the court, this 21 day of June, 1982,

ORDERED that the motions of defendants American Natural Resources Company, Michigan Wisconsin Pipe Line

Company, Southland Royalty Company, the General American Oil Company of Texas, J.S. Harrell, Davis Oil Company, Reading and Bates Petroleum Company, Gordon L. Heele, James G. Watt, Raymond G. Albrecht, Paul Messinger & Co., Marlis E. Smith, trustee, and Panhandle Western Gas Company to dismiss Plaintiff's amended complaint shall be and hereby are, granted; and it is further

ORDERED that the motion of Fred L. Engle, d/b/a Resource Service Company, for judgment on the pleadings shall be, and hereby is, granted; and it is further

ORDERED that the joint motion for Russell Huff to intervene as a party plaintiff and to file an amended complaint adding Russell Huff as a party plaintiff

shall be, and hereby is, denied; and it is further

ORDERED that this action is dismissed.

/s/ Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

NAARTEX CONSULTING CORP.

IBLA 80-65 Decided June 9, 1980

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing protest of the issuance of oil and gas lease W-50394.

Appeal dismissed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Cancellation

Under 30 U.S.C. §188(b) (1976), an oil and gas lease issued after August 21, 1935, under the provisions of 30 U.S.C. §226 (1976), is subject to cancellation by the Secretary for lease violation unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. A lease

known to contain such deposits is subject to cancellation in accordance with 30 U.S.C. §184(h)(1) (1976), which requires a proceeding in Federal district court instituted by the Attorney General.

2. Oil and Gas Leases: Cancellation

By the terms of 30 U.S.C. §184(h)(2) (1976), the Department is prevented from cancelling a lease held by a qualified bona fide purchaser, even though the interest of its assignor or other predecessor in title (including the original lessee of the United States) may have been subject to cancellation for a violation of the Mineral Leasing Act. In the absence of any evidence that the facts surrounding certain mesne assignments were sufficient to put an ordinary prudent person on inquiry, an inquiry which, if followed with reasonable diligence, would lead to the discovery of defects in the title to the lease or equitable rights of any other persons

affecting the property, the Department is prevented from cancelling a lease based upon violations by a lease holder's predecessor-in-interest.

3. Oil and Gas Leases: Cancellation--Rules of Practice: Protest
Where a protestant challenges the bona fides of an oil and gas lease-holder, the burden is upon appellant, not the BLM, to establish by facts the substance of its charge.

4. Oil and Gas Leases: Cancellation

If a lease is cancelled or forfeited to the Government pursuant to 30 U.S.C. §184(h) (1976), such lease shall be sold by the Secretary to the highest responsible bidder by competitive bidding.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; Randall M. Case, Esq., Denver, Colorado, for General American Oil Co. of Texas; Douglas B. Glass, Esq., Houston, Texas, for Michigan Wisconsin Pipe Line Co.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The simultaneous drawing entry card (DEC) of Norbert F. Albrecht was drawn with first priority for Parcel No. 484 offered by the Wyoming State Office, Bureau of Land Management (BLM), in its March 1975 list of lands available for oil and gas leasing. The DEC was assigned Serial No. W 50394 and matured into oil and gas lease W 50394 issued effective June 1, 1975, for the SW 1/4 sec. 2; SE 1/4 sec. 4; lots 1, 2, S 1/2 NE 1/4, SE 1/4 sec. 5; N 1/2 S 1/2 sec. 11, T. 44 N., R. 75 W., sixth principal meridian, Campbell County, Wyoming, containing 779.19 acres. Record title to the lease was assigned, effective July 1, 1975, to J.S. Harrell, with Albrecht retaining a 5 percent overriding royalty interest.

Subsequently, record title to the lease became vested in Michigan Wisconsin Pipe Line Co. and General American Oil Co. of Texas, each owning an undivided 50 percent interest. Thereafter, operation rights in a portion of the lease were vested in Davis Oil Co., Southland Royalty Co., and Reading & Bates Oil and Gas Co. As the result of drilling activity under Communitization Agreement NRM 1180 in SW 1/4 sec. 11, T. 44 N., R. 75 W., production of oil was achieved and lease W-50394 converted to producing status, subject to minimum royalty payment in lieu of annual rental. As a result of other completed wells, all land in lease W 50394 has been determined to be on the known geologic structure (KGS) of Hartzog Draw Field,

with the definitions being issued from June 15, 1977, to February 9, 1978.

On January 25, 1979, Geosearch, Inc., by Alvin Abrams, President, filed a protest against issuance of lease W-50394 to Norbert Albrecht. Geosearch was allegedly acting on behalf of K.J. Feil, a member of an amorphous class of persons who had filed DEC's for the said Parcel No. 484, but were unsuccessful in the drawing. The protest charged the Albrecht had not been qualified to receive lease W 50394 because his DEC had been filed by Fred L. Engle, d.b.a. Resource Service Co., under a service agreement violative of the Department's regulations, 43 CFR 3102.7 and 3112.5-2. The protest requested the cancellation of any interests in lease W 50394 found

to be in the hands of persons who were not bona fide purchasers thereof, and reissuance of those lease interests to Geosearch, Inc., and the class of persons represented by the protest.

The BLM State Office dismissed the protest by decision of February 6, 1979, stating:

> Regulation 43 CFR 3112.2-1 (a) states, "Unsuccessful drawees will be notified by the return of their respective entry cards." At the time this parcel was won by Mr. Albrecht, in 1975, the #2 and #3 cards were returned to the unsuccessful applicants, in accordance with the above cited regulation. Since none of the unsuccessful applicants appealed the return of their cards within 30 days after they were received, we issued the lease to the #1 drawee, Mr. Albrecht, effective June 1, 1975.
>
> Mr. Albrecht has assigned 100% of his interest in this lease to Mr. J.S. Harrell,

effective July 1, 1975. There have been two other record title assignments approved since that time and the lease is now in the names of Michigan-Wisconsin Pipe Line Company and General American Oil Company of Texas, an undivided 50% each. Regulation 43 CFR 3102.1-2(a) sets out the provisions of the statutes to protect bona fide purchasers.

On July 19, 1977, a well was completed on the SW 1/4 Sec. 11 in this lease and the lease is now in a producing status. Regulation 43 CFR 3108.3 states, "Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act." (Emphasis added).

This office does not have the authority to determine the status of purchasers. "The burden is on the protestant to show justification for the disqualification of the successful drawee in a simultaneous filing." 39 IBLA 49, Geosearch, Inc., January 16, 1979.

The subsequent appeal by Geosearch to this Board, docketed under IBLA 79-270, was summarily dismissed on May 6, 1979, for failure to file a statement of reasons in support of the appeal. 43 CFR 4.402.

Thereafter on September 19, 1979, Naartex Consulting Corp., by Alvin Abrams, President, filed an identical protest against the issuance of lease W-50394, allegedly acting on behalf of Russell H. Huff, a member of the amorphous class of persons who had filed DEC's unsuccessfully for the said Parcel No. 484 in March 1975.

By decision of September 28, 1979, the BLM State Office dismissed this protest, stating as follows:

As was recited to you in our letter of February 6, 1979: Regulation 43 CFR 3112.2-1(a)(4) states, "unsuccessful drawees will be notified by the return of their respective entry cards." At the time this parcel was won by Mr. Albrecht, in 1975, all other unsuccessful drawees' cards were returned. None of those applicants ever appealed, therefore they retain no interest in this lease. At the time this parcel issued, the #2 and #3 cards were returned to the unsuccessful applicants. Since neither of the unsuccessful applicants appealed the return of their cards within thirty days after they had received them, their offers no longer remain viable, and they then lost any possible interest in this lease. See Geosearch, Inc., 41 IBLA 291, 293 (1979), Geosearch, Inc., 40 IBLA 397 (1979), Geosearch, Inc., 39 IBLA 49, 51 n. 1 (1979); Beard Oil Co., 77 I.D. 166 (1970).

This lease issued to the #1 drawee, Mr. Albrecht, effective June 1, 1975. He assigned 100% of his record

title interest to Mr. J.S. Harrell, effective July 1, 1975. There have been two other record title assignments approved since that time, so that the lease is now held 50% each by Michigan-Wisconsin Pipe Line Company and General American Oil Company of Texas. Bona fide purchasers interests are protected under the Mineral Lands Leasing Act[,] * * * 30 U.S.C. 184(h)(2) (1976); 43 CFR 3102.1-2. No prima facie evidence has been presented to show that the assignees are not bona fide purchasers. See 43 CFR 3102.1-2(c); Geosearch, Inc., 41 IBLA 291, 294.

On July 19, 1977, a well was completed on the SW 1/4, Section 11 in this lease, putting it in the producing status in which it remains. Under the Mineral Lands Leasing Act[,] * * * 30 U.S.C. 184(h)(1), 188(a) (1976)[, and] 43 CFR 3108.3, producing leases may only be cancelled in suits brought by the United States Attorney General in the appropriate United States District Court. Even if prima facie evidence that the assignees are not bona fide purchasers had been presented, and a suit

> for cancellation had been completed as alluded to above, the interests in this lease could only be set for sale by competitive bid under the Mineral Lands Leasing Act [,] * * * 30 U.S.C. 184(h)(2) (1976).

Naartex has appealed to this Board and set forth the following arguments:

1. Lease W 50394 was issued to Albrecht in violation of the applicable regulations, 43 CFR 3102.7 and 3112.5-2;

2. None of the assignees of various interests in lease W 50394 can qualify as bona fide purchasers;

3. The BLM State Office erred in not requiring the various assignees of the lease to make an immediate showing of bona fide status upon filing of the Naartex protest;

4. The purported return of the second and third drawn DEC's cannot deprive Naartex or any member of the class it represents of any rights they may have to lease W 50394;

5. A hearing before an Administrative Law Judge should be invoked to ascertain the relationships between Engle, Harrell, Michigan Wisconsin Pipe Line Co., and General American Oil Co. of Texas.

[1] General American responded that the matter whether lease W 50394 may be cancelled is not properly before the Board, as the lease includes lands known to contain valuable deposits of oil or gas, and so may not be cancelled administratively by the Department of the Interior, but only after judicial

proceedings. 30 U.S.C. §188(b) (1976). Furthermore, General American asserts it has the status of a bona fide purchaser and so is entitled to the protection afforded by 30 U.S.C. §184 (1976). We agree. The Mineral Lands Leasing Act provides at 30 U.S.C. §188(b) (1976) that an oil and gas lease issued after August 21, 1935, under the provisions of 30 U.S.C. §226 (1976), shall be subject to cancellation by the Secretary for lease violation unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. A lease known to contain such deposits would be subject to 30 U.S.C. §184(h)(1) (1976), which states in part:

> If any interest in any lease is owned * * * in violation of any of the provisions of

> this chapter, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a district court for the district in which the leased property or some part thereof is located or in which the defendant may be found.

Accordingly, the Board does not have jurisdiction to cancel a producing lease. The appeal may be dismissed for this reason.

Michigan Wisconsin Pipe Line also responded, arguing that the appeal should be dismissed because Naartex has not complied with certain procedural regulations of the Board as to the time for filing an appeal. Naartex should be barred, Michigan Wisconsin argues, from relitigating this protest by reason of

the doctrine of administrative finality due to the relationship of its officers to Geosearch, Inc., whose appeal with respect to the identical lease has heretofore been dismissed. Michigan Wisconsin joins General American in pointing out that lease W 50394 is a producing lease which cannot be cancelled except by an action in Federal court and further argues that the factual basis upon which Naartex predicates its statement of reasons is in error. Holders of DEC's, it maintains, other than those drawn second or third, have no right to contest issuance of the Federal oil and gas lease under the simultaneous drawing procedures, and even a failure to return the DEC's of unsuccessful drawees should not serve to perpetuate appeal rights in such

persons. Michigan Wisconsin concludes by stating that it is a bona fide purchaser entitled to the protection of 30 U.S.C. §184(h)(2) (1976).

In the rules of procedure for the Department, 43 CFR 4.450-2 states that where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken before the Bureau of Land Management will be deemed to be a protest and such action will be taken as is deemed to be appropriate in the circumstances. Appellant purports to protest an action taken by BLM some 4 years before the protest was filed. Appellant does not allege it was injured at the time by the issuance of lease W 50394 to Albrecht, nor even that it had filed a DEC for the

parcel involved. The protest is based on the nebulous argument that it is in behalf of an undisclosed class of persons who allegedly filed DEC's for the parcel. The pleas is that the existing lease be cancelled and reissued to Naartex and the unnamed persons allegedly injured by issuance of the lease. It is difficult, if not impossible, to perceive how Naartex, more than 4 years after the action was taken, can be considered a protestant under the regulations of this Department. As to the class of unnamed persons for whom Naartex altruistically makes the protest, none is in position to appeal the rejection of his or her lease offer after passage of 4 years. The Departmental regulations require notice of appeal from rejection of an offer to lease to

be filed within 30 days after the rejection of the offer. 33 CFR 4.411. Under standard Departmental practice, the DEC's not drawn first, second, or third, were returned to the offerors immediately after the drawing, and indeed the DEC plainly states on its face, "The return of this card indicates that you were not successful in the drawing and your offer is rejected." As none of the unsuccessful drawees appealed relative to Parcel 484 within 30 days after return of their DEC's, whatever rights any of the drawees might have had to appeal have long since vanished. As a stranger in title to any interest in the lease, appellant is bound by the acts or omissions of its predecessors. Amoco Production Co., 16 IBLA 215 (1974).

The argument of respondent Michigan Wisconsin that the appeal should be dismissed summarily is well taken. We will, however, discuss the more substantive facets of the case.

[2] Appellant argues that Albrecht was not the sole party in interest in his offer because of a service agreement between himself and Engle, which allegedly created an interest in Engle, in violation of 43 CFR 3102.7, in each DEC lease offer he filed for his customers.

In Frederick W. Lowey, 40 IBLA 381 (1979), the Board said in the syllabus:

> When an individual files an oil and gas lease offer through a leasing service under a contractual agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or

> sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service a commission according to a set schedule on any sale plus a percentage of any royalties, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Accord, Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). However, in Geosearch, Inc. 40 IBLA 401 (1979), and in Geosearch, Inc., 39 IBLA 49 (1979), the Board expressed these views:

> Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of

> any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. In such circumstances, the service does not have an "interest" in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying.

The appellant herein has not shown that the service agreement alleged to exist between Engle and Albrecht is of the first type above discussed. In any event, the Wyoming State Office was satisfied by the showing of Albrecht and issued lease W 50394 to him. Thereafter the lease was assigned to Harrell and later to Michigan Wisconsin Pipe Line.

Under 30 U.S.C. §184(h)(2) (1976) and 43 CFR 3102.1-2(a), the Department is prevented from cancelling a lease held by a qualified bona fide purchaser, even though the interest of its assignor or other predecessor in title (including the original lessee of the United States) may have been subject to cancellation for a violation of the Mineral Leasing Act. Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966); Geosearch, Inc., 39 IBLA 49 (1979); Robert G. Race, 37 IBLA 162 (1978); Duncan Miller, A-30600 (Dec. 1, 1966).

In the absence of any facts that suggest bad faith on the part of the present record title holders of lease W 50394, this provision applies and the lease may not be cancelled,

despite the possibility of any improprieties in its issuance. Geosearch, Inc., supra; Robert G. Race, supra; Duncan Miller, supra. The present record title holders of lease W 50394 have asserted they can establish that they were bona fide purchasers, within the meaning of the Act, in acquisition of that title. Appellant has not provided any evidence that the facts surrounding the mesne assignments from Albrecht to Michigan Wisconsin Pipe Line were sufficient to put an ordinary prudent person on inquiry, an inquiry which, if followed with reasonable diligence, would lead to the discovery of defects in the title to the lease or equitable rights of any other persons affecting the property. Cf. Southwestern Petroleum Corp., supra at 657.

[3] Appellant contends BLM erred in not requiring the various assignees of lease W 50394 to make an immediate showing of their bona fides upon the filing of the protest by appellant in 1979. As pointed out above, the burden is on the appellant to present facts relating to the bona fide purchasers, not innuendoes. Geosearch, Inc., 39 IBLA at 54. Appellant's allegations appear to be entirely conjectural. He has failed to meet his burden of showing by competent evidence of irregularities that the lease was improperly issued, or that the present record title holders of the lease are not qualified under the Act.

Appellant argues that the purported return of the second and third

drawn DEC's cannot deprive appellant or any member of the class it represents of any rights that they may have to lease W-50394. None of the applicants whose DEC's were filed for Parcel No. 484 in March 1975 had any appeal rights beyond 30 days after receiving the returned DEC. 43 CFR 4.411. No appeals were filed by any such persons, either by an unsuccessful offeror or one who was drawn second or third. Appellant suggests that the DEC's may not have been returned to the applicants so that the actual 30-day appeal period was never defined. In an affidavit dated February 12, 1980, Mrs. Glenna Lane, Chief, Oil and Gas Section, Wyoming State Office, avers that prior to September 1976, all unsuccessful DEC's

were rejected and returned to the party making the filing immediately upon award of the respective lease. In any event, the record does not disclose any inquiry relative to the DEC's filed for Parcel 484 during the period from May 15, 1975, when the lease was executed on behalf of the United States, and January 25, 1979, when the aborted protest of Geosearch, Inc., was filed against lease W 50394. We cannot accept the argument that the appeal rights of the unsuccessful drawees have been abridged or abrogated by any procedure of the Wyoming State Office in returning the unsuccessful DEC's.

[4] Nor can we recognize any rights in appellant from its purported class action protest. There is nc basis

for any entity which did not participate in the original drawing with a DEC to have any rights to obtain any interest in the lease other than from the original lessee or its duly recognized successors in interest. If any reason exists to compel cancellation of a noncompetitive oil and gas lease, issued in violation of the statute, such cancelled interest may be disposed of only by competitive bidding. 30 U.S.C. §184(h)(2), (1976).

We see no reason, on the basis of the record before us, to grant appellant's request for a fact-finding hearing under 43 CFR 4.415. The request is denied.

Therefore, pursuant to the authority delegated to the Board of Land

Appeals by the Secretary of the Interior, 43 CFR 4.1, we find no error in the decision appealed from; the appeal is accordingly dismissed.

/s/ Douglas E. Henriques
Douglas E. Henriques
Administrative Judge

We concur:

/s/ Edward W. Stuebing
Edward W. Stuebing
Administrative Judge

/s/ Frederick Fishman
Frederick Fishman
Administrative Judge

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

September 16, 1980

IBLA 80-65	:	48 IBLA 166 (1980)
NAARTEX CONSULTING CORP.	:	W 50394
	:	Oil and Gas Lease
	:	Petition for Reconsideration Denied

ORDER

By decision of June 9, 1980, this Board affirmed a decision of the Wyoming State Office, Bureau of Land Management, dismissing a protest by Naartex Consulting Corp. to the issuance of oil and gas lease W 50394. The Board

found no error in the decision being appealed from. On September 8, 1980, Naartex petitioned for reconsideration of the decision.

The Department's regulations, at 43 CFR 4.21(c), provide

> Unless otherwise provided by regulation, reconsideration of a decision may be granted only in extraordinary circumstances where, in the judgment of the Director or an Appeals Board, sufficient reason appears therefor. Requests for reconsideration must be filed promptly, or within the time required by the regulations relating to the particular type of proceeding concerned, and must state with particularity the error claimed.

As the decision at issue was promulgated June 9, 1980, and the petition for reconsideration was received September 8, the petition does not comply with the regulatory requirement for promptness.1/

1/ See 30 U.S.C. §226-2 (1976)

Furthermore, reconsideration of this Board's decisions may be granted only in extraordinary cases where, in the judgment of the Board, sufficient reasons appear therefore. 43 CFR 4.21(c). Petitioner has not submitted any information which was not considered by the Board before it gave its decision on June 9, 1980.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied.

/s/ Douglas B. Henriques
Douglas B. Henriques
Administrative Judge

We concur:

/s/ Edward W. Stuebing
Edward W. Stuebing
Administrative Judge

/s/ Frederick Fishman
Frederick Fishman
Administrative Judge

APPEARANCES:

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UNITED STATES DEPARTMENT OF INTERIOR

BUREAU OF LAND MANAGEMENT
State Office
P.O. Box 1828
Cheyenne, Wyoming 82001

September 28, 1979

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Naartex Consulting Corporation
Attention: Alvin Abrams
80 Wall Street, Suite 517
New York, New York 10005

Protest Dismissed

Dear Mr. Abrams:

This is to advise you that this office is in receipt of your letter of September 14, 1979, protesting the issuance of the above-numbered Federal oil and gas lease. As was recited to you in our letter of February 6, 1979: 43 CFR 3112.2-1(a)(4) states, "Unsuccessful drawees will be

notified by the return of their respective entry cards". At the time this parcel was won by Mr. Albrecht, in 1975, all other unsuccessful drawees' cards were returned. None of those applicants ever appealed, therefore they retain no interest in this lease. At the time this lease issued, the #2 and #3 cards were returned to the unsuccessful applicants. Since neither of the unsuccessful applicants appealed the return of their cards within thirty days after they had received the, their offers no longer remain viable, and they then lost any possible interest in this lease. See Geosearch, Inc., 41 IBLA 291, 293 (1979), Geosearch, Inc., 40 IBLA 397 (1979), Geosearch, Inc., 39 IBLA 49, 51 n. 1 (1979); Beard Oil Co., 77 I.D. 166 (1970). This lease issued

to the #1 drawee, Mr. Albrecht, effective June 1, 1975. He assigned 100% of his record title interest to Mr. J.S. Harrell, effective July 1, 1975. There have been two other record title assignments approved since that time, so that the lease is now held 50% each by Michigan-Wisconsin Pipe Line Company and General American Oil Company of Texas. Bona fide purchasers interests are protected under the Mineral Lands Leasing Act 27(h)(2); 30 U.S.C. 184(h)(2) (1976); 43 CFR 3102.1-2. No prima facie evidence has been presented to show that the assignees are not bona fide purchasers. See 43 CFR 3102.1-2(c); Geosearch, Inc., 41 IBLA 291, 294.
On July 19, 1977, well was completed on the SW 1/4 Section 11 in this lease, putting it in the producing status in

which it remains. Under the Mineral Lands Leasing Act 27(h)(1), 31(a); 30 U.S.C. 184(h)(1), 188(a) (1976); 43 CFR 3108.3, producing leases may only be cancelled in suits brought by the United States Attorney General in the appropriate United States District Court. Even if prima facie evidence that the assignees are not bona fide purchasers had been presented, and a suit for cancellation had been completed as alluded to above, the interests in this lease could only be set for sale by competitive bid under the Mineral Lands Leasing Act 27(h)(2); 30 U.S.C. 184(h)(2) (1976). Therefore, your protest on the above-numbered oil and gas lease is hereby dismissed. In the event an appeal is filed, the adverse parties to be served are: Michigan-

Wisconsin Pipe Line Company, 1100 Galleria Towers West, 5075 Westheimer, Houston, TX 77056 and General American Oil Company of Texas, Meadows Building, Dallas, TX 75206. The right of appeal to the Board of Land Appeals, Office of the Secretary is allowed in accordance with the regulations in 43 CFR Part 4 (formerly 1840). However, if an appeal is to be taken, the notice of appeal must be filed in this office (not the Board) so that the case file can be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations (see enclosure).

Sincerely yours,

/s/ Glenna M. Lane

(Mrs.) Glenna M. Lane
Chief, Oil and Gas Section

Enclosure

cc:

Michigan-Wisconsin Pipe Line Company
1100 Galleria Towers West
5075 Westheimer
Houston, TX 77056

General American Oil Company of Texas
Meadows Building
Dallas, TX 75206